

ARKANSAS CODE OF 1987 ANNOTATED

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ARKANSAS CODE OF 1987 ANNOTATED



VOLUME 27A 2008 Replacement TITLE 26: TAXATION (CHAPTERS 52–57)

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Under the Direction and Supervision of the
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Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2007 Regular Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2007 Ark. LEXIS 685 (December 13, 2007) and 2007 Ark. App. LEXIS 869 (December 12, 2007).

Federal Supplement through December 12, 2007.

Federal Reporter 3d Series through December 12, 2007.

United States Supreme Court Reports, through December 12, 2007.

Bankruptcy Reporter through December 12, 2007.

Arkansas Law Notes through the 2006 Edition.

Arkansas Law Review through Volume 60, p. 353.

University of Arkansas at Little Rock Law Review through Volume 28, p. 744.

A.L.R. 6th through Volume 17, p. 757.

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| 2. Agriculture | 17. Professions, Occupations, and Businesses |
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| 4. Business and Commercial Law | 19. Public Finance |
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User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume, are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.

TITLE 26

TAXATION

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12. MEDICAID PROVIDER EXCISE TAX. [REPEALED.]
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14. HOME HEALTH AND PERSONAL CARE SERVICES TAX. [REPEALED.]
15. BINGO GAMES. [REPEALED.]
16. ARKANSAS SALES TAX ADVISORY COMMITTEE. [EXPIRED.]

Cross References. Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.
Direct deposits by the State into local government cash management trust ac-

count, § 19-8-311.
Municipal Aid Fund, § 19-5-601 et seq.
Revenue Classification Law, § 19-6-201 et seq.

RESEARCH REFERENCES

A.L.R. Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement. 8 A.L.R.4th 1068.
Failure to file, or deficiency in, state or local sales tax return. 20 A.L.R.4th 952.
Sales, use, or privilege tax on sales of, or revenues from, sales of advertising. 40

A.L.R.4th 1114.
Validity of state or local gross receipts tax on gambling. 21 A.L.R.5th 812.
Am. Jur. 3 Am. Jur. 2d Advert. § 6.
9B Am. Jur. 2d Bankr. § 2846 et seq.
68 Am. Jur. 2d, Sales Tax, § 1 et seq.
C.J.S. 85 C.J.S., Tax. § 1231 et seq.

CASE NOTES

In General.
Acts 1935, No. 233 was not invalid as imposing an unreasonable burden on retail dealers. *Wiseman v. Phillips*, 191 Ark. 63, 84 S.W.2d 91 (1935) (decision under prior law).
The tax levied by this chapter is an excise or privilege tax. *Hardin v. Vestal*, 204 Ark. 492, 162 S.W.2d 923 (1942).
Tax levied by this chapter is in reality a retail sales tax and not a use tax. *McLeod*

v. J. E. Dilworth Co., 205 Ark. 780, 171 S.W.2d 62 (1943), *aff'd*, 322 U.S. 327, 64 S. Ct. 1023, 88 L. Ed. 1304 (1944); *Cook v. Southeast Ark. Transp. Co.*, 211 Ark. 831, 202 S.W.2d 772 (1947).
The Gross Receipts Tax Act, Acts 1941, No. 386, is a sales tax act. *Little Rock Mun. Water Works v. Ragland*, 279 Ark. 324, 651 S.W.2d 78 (1983).
Cited: *WSC, Inc. v. City of Jacksonville*, 302 Ark. 295, 789 S.W.2d 448 (1990).

SUBCHAPTER 1 — GENERAL PROVISIONS

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26-52-116. [Transferred.]

Cross References. Sales and use tax, § 26-74-601 et seq.
Vending devices, § 26-57-1201 et seq.
Effective Dates. Acts 1965, No. 181, § 2: Mar. 9, 1965. Emergency clause provided: "Whereas, it is necessary to clarify the applicability of the Gross Receipts Tax in instances where tangible personal property is consumed or used under a

lease or rental contract, and it has been found that increased population and increased cost of operation have placed heavy demands on funds available for the operation of government, and it is necessary to supplement said funds so that the proper functions of government may be performed. Therefore, in order to provide the supplemental funds for the operation

of government, and this Act being necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 340, § 3: Mar. 2, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present law the Department of Finance and Administration is including the federal manufacturer's excise taxes on motor vehicles and motor vehicle tires as gross receipts derived from the sale of such motor vehicles and motor vehicle tires and is requiring the payment of the sales tax upon the total price of such vehicles and tires including the federal excise taxes; that it appears to be entirely inequitable and inappropriate to collect Arkansas gross receipts taxes upon the amount paid as federal manufacturer excise taxes on vehicles and vehicle tires; that this Act is designed to correct this situation by excluding federal manufacturer's excise taxes from the definition of gross receipts or gross proceeds for the purpose of determining the amount of gross receipts taxes due on such vehicles and tires and should be given effect at the earliest possible date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 401, § 50: Jan. 1, 1980.

Acts 1987 (1st Ex. Sess.), No. 13, § 6: June 12, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the State is in serious danger of losing revenues which are necessary to provide adequate funding for schools and other essential services required by the citizens of this State and that the provisions of this Act are necessary to avoid a substantial reduction in State revenues. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 510, § 8: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that this Act establishes a new tax known as the 'Rental Vehicle Tax' and provides persons engaged in the business of renting licensed motor vehicles a credit for portion of the sales tax paid by the person on certain licensed motor vehicles purchased on or after July 1, 1989, and that for the effective administration of this act, the Act should become effective on July 1, 1989. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1989."

Acts 1995, No. 835, § 9: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas law is unclear as it applies to the taxation of contractors and subcontractors who construct and repair buildings and other improvements and structures affixed to real estate; that Arkansas gross receipts and use tax laws which impose tax on certain services to motors, electrical appliances and devices, household appliances, and machinery were never intended by the General Assembly to apply to nonmechanical, passive or manually operated building systems or components; that none of the charges made by a contractor for labor or materials used in performing such non-taxable services are properly subject to tax; that contractors and subcontractors are suffering substantial losses on audits after making best efforts to comply with existing law; and that the gross receipts and use tax laws need to be clarified to specifically exclude certain services to buildings and other improvements or structures affixed to real estate from tax. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995."

Acts 1995, No. 848, § 7: Mar. 31, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the General Assembly has previously passed Act 1237 of 1975 and Act 983 of 1981 to exempt railroad parts, railroad cars and equipment and the repair and maintenance of such railroad parts, railroad cars and equipment from Arkansas Gross Receipts and Compensat-

ing Use Tax; that on January 1, 1987 the Arkansas Department of Finance and Administration issued new regulations which provide that parts, materials and supplies used in such repairs are still subject to tax; that Arkansas law specifically exempts parts and other tangible personal property incorporated into commercial jet aircraft and vessels, barges and towboats from tax; that a substantial number of Arkansans are employed in Arkansas facilities where such repairs are performed; and that these jobs are at risk due to the relocation of such repair facilities to other states which clearly exempt such parts, materials and supplies from tax. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1266, § 5: Apr. 9, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that businesses which are donating merchandise to certain state and national personnel and emergency service workers and volunteers are being charged sales tax on their donations; that these donations are vital to the health and welfare of the citizens of this state; that taxation of these items will reduce the donations and assistance provided by businesses in this state to state disaster area workers and volunteers; and that this act will eliminate the tax on these donations thereby encouraging continued donations during times of state disaster. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become ef-

fective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1220, § 7: Apr. 7, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that certain Code provisions affecting the lease of property are in urgent need of clarification; that previous amendments to the Code concerning the lease of motor vehicles resulted in taxpayer confusion, particularly with respect to whether the short term rental of diesel-powered trucks was subject to gross receipts tax; and, that this act is necessary to clarify that the short-term rental of all vehicles is subject to gross receipts tax. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 599, § 2: Mar. 24, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current law excludes the transfer of a damaged vehicle to an insurance company from the definition of 'sale' for purposes of gross receipts tax; that this definition is in need of clarification to ensure that the original legislative intent is fulfilled; and that this act is immediately necessary to prevent possible confusion among the taxpayers of Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the

Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2003, No. 1273, § 88: as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008: “Effective date. It is found and determined by the Eighty fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state’s proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated

that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Acts 2007, No. 154, § 7: Mar. 1, 2007. Effective date clause provided: “Sections 1–6 of this act shall be effective on the first day of the calendar month following the effective date of this act.”

Acts 2007, No. 154, § 8: Feb. 28, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the tax for free admission defeats the primary intent of a ‘free’ admission; that the recordkeeping for the seller or person furnishing the free admission is cost prohibitive and unnecessarily burdensome to the philanthropist and that the tax does not yield significant revenues to the state to justify the expense of the recordkeeping and submission of the tax; and that this act is immediately necessary for the state to enjoy the economic benefit from persons and entities giving free tickets to tourist attractions during the springtime Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 181, § 45: Jan. 1, 2008.

26-52-101. Title.

This chapter shall be known and cited as the “Arkansas Gross Receipts Act of 1941”.

History. Acts 1941, No. 386, § 1; A.S.A. 1947, § 84-1901; Acts 2003, No. 1273, § 3.

Amendments. The 2003 amendment substituted "chapter" for "act."

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005.

Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

CASE NOTES

In General.

Acts 1941, No. 386 is a sales tax notwithstanding its short title. *U-Drive-'Em Serv. Co. v. Hardin*, 205 Ark. 501, 169

S.W.2d 584 (1943); *Cook v. Sears-Roebuck & Co.*, 212 Ark. 308, 206 S.W.2d 20 (1947).

Cited: *Jefferson Coop. Gin, Inc. v. Milam*, 255 Ark. 479, 500 S.W.2d 932 (1973).

26-52-102. Purposes of chapter.

The purposes of this chapter are to provide:

- (1) Relief of the common schools;
- (2) Funds to buy free textbooks for the first eight (8) grades thereof;
- (3) Funds for state charitable institutions;
- (4) Funds for circulating library service in connection with the public schools and funds to take the place of homestead exemptions;
- (5) For the wards of the state who will receive support through the Department of Human Services; and
- (6) For worthy causes.

History. Acts 1941, No. 386, § 17;
A.S.A. 1947, § 84-1917n.

CASE NOTES

Cited: Pledger v. Simpson Press, Inc.,
304 Ark. 274, 801 S.W.2d 44 (1990).

26-52-103. Definitions.

As used in this chapter:

(1) "Alcoholic beverage" means a beverage that is suitable for human consumption and contains five-tenths of one percent (0.5%) or more of alcohol by volume;

(2)(A) "Bundled transaction" means a retail sale of two (2) or more products, except real property and services to real property, in which:

(i) The products are otherwise distinct and identifiable; and

(ii) The products are sold for one (1) non-itemized price.

(B) "Bundled transaction" does not include the sale of any product in which the sales price varies or is negotiable based on the selection by the purchaser of the products included in the transaction.

(C) The Department of Finance and Administration shall promulgate rules to implement this subdivision (2);

(3)(A) "Consumer", "purchaser", or "user" means the person to whom the taxable sale is made or to whom taxable services are furnished.

(B) All contractors are deemed to be consumers or users of all tangible personal property, including materials, supplies, and equipment used or consumed by them in performing any contract.

(C) The sales of all such tangible personal property to contractors are taxable sales within the meaning of this chapter;

(4) "Contract" means any agreement or undertaking to construct, manage, or supervise the construction, erection, alteration, or repair of any building or other improvement or structure affixed to real estate, including any of their component parts;

(5) "Contractor" means any person who contracts or undertakes to construct, manage, or supervise the construction, erection, alteration, or repair of any building or other improvement or structure affixed to real estate, including any of their component parts;

(6)(A) "Delivery charge" means a charge by a seller of tangible personal property or services for preparation and delivery to a location designated by the purchaser of the tangible personal property or services, including without limitation transportation, shipping, postage, handling, crating, and packing.

(B) If a shipment includes tax-exempt property and taxable property, the seller shall pay the tax imposed by this chapter only on the percentage of the delivery charge allocated to the taxable property by using:

(i) A percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment; or

(ii) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment;

(7) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one (1) or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subdivision (10)(A) and is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(B) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36, as in effect on January 1, 2007;

(8)(A) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients.

(B) "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material.

(C) "Direct mail" does not include multiple items of printed material delivered to a single address;

(9) "Director" means the Director of the Department of Finance and Administration or any of his or her authorized agents;

(10)(A) "Doing business" or "engaging in business" includes any and all local activity regularly and persistently pursued by any seller or vendor through agents, employees, or representatives with the object of gain, profit, or advantage and that results in a sale, delivery, or the transfer of the physical position of any tangible personal property by the vendor to the vendee at or from any point within Arkansas, whether from warehouse, store, office, storage point, rolling store, motor vehicle, delivery conveyance, or by any method or device under the control of the seller effecting such a local delivery without regard to the terms of sale with respect to point of acceptance of the order, point of payment, or any other condition.

(B) As set out in this subdivision (10), "doing business" or "engaging in business" is equally applicable to sellers of services as are made the subject matter of the tax imposed by this chapter.

(C)(i) The provisions of this subdivision (10) shall be cumulative to the gross receipts tax law and shall not be construed as levying a tax

on any receipts derived from personal or professional services not before made the subject matter and within the scope of the present gross receipts tax law, as amended.

(ii) The provisions of this subdivision (10)(C) shall not be construed as repealing or modifying any of the provisions therein;

(11) "Established business" means any business operated or conducted by any person in a continuous manner for any length of time from an established place or in an established manner;

(12)(A) "Food" and "food ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(B) "Food" and "food ingredients" do not include an alcoholic beverage, tobacco, or a dietary supplement;

(13)(A) "Gross receipts", "gross proceeds", or "sales price" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, any loss, any cost of transportation to the seller, any tax imposed on the seller, and any other expense of the seller;

(iii) Any charge by the seller for any service necessary to complete the sale, other than a delivery charge or an installation charge;

(iv) Delivery charge;

(v)(a) Installation charge.

(b) Installation charges will not be included in the "gross receipts", "gross proceeds", or "sales price" if they are not a specifically taxable service under this chapter or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and the installation charges have been separately stated on the invoice, billing, or similar document given to the purchaser;

(vi) The value of exempt tangible personal property given to the purchaser if taxable and exempt tangible personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) Credit for any trade-in.

(B) "Gross receipts", "gross proceeds", or "sales price" does not include:

(i) A discount including cash, term, or a coupon that is not reimbursed by a third party and that is allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, or a carrying charge from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(iii) Any tax legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(14)(A)(i) "Lease" or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.

(ii) A lease or rental may include future options to purchase or extend.

(B) "Lease" or "rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments;

(iii)(a) Providing tangible personal property along with an operator for a fixed or indeterminate period of time.

(b) A condition of this exclusion in this subdivision (14)(B)(iii) is that the operator is necessary for the equipment to perform as designed.

(c) For the purpose of this subdivision (14)(B)(iii), an operator must do more than maintain, inspect, or set up the tangible personal property; or

(iv) Agreements covering motor vehicles and trailers if the amount of consideration may be increased or decreased by reference to the amount realized upon the sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(2), as in effect on January 1, 2007.

(C) This definition of "lease" or "rental" shall:

(i) Be used for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code of 1986, as in effect on January 1, 2007, the Uniform Commercial Code, § 4-1-101 et seq., as in effect on January 1, 2007, or another provision of federal, state, or local law;

(ii) Be applied only prospectively from January 1, 2008 and shall have no retroactive impact on existing leases or rentals; and

(iii) Impact neither any existing sale-leaseback exemption nor exclusion;

(15) "Person" includes any individual, partnership, limited liability company, limited liability partnership, corporation, estate, trust, fiduciary, or any other legal entity;

(16) "Prepared food" means:

(A) Food sold in a heated state or heated by the seller;

(B) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(C)(i) Food sold with an eating utensil provided by the seller, including a plate, knife, fork, spoon, glass, cup, napkin, or straw.

(ii) As used in subdivision (16)(C)(i) of this section, "plate" does not include a container or packaging used to transport the food;

(17) "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;

(18)(A) "Sale" means the transfer of either the title or possession except in the case of a lease or rental for a valuable consideration of tangible personal property regardless of the manner, method, instrumentality, or device by which the transfer is accomplished.

(B) "Sale" includes the:

(i) Exchange, barter, lease, or rental of tangible personal property; or

(ii) Sale, exchanging, or other disposition of admissions, dues, or fees to clubs, to places of amusement, or to recreational or athletic events or for the privilege of having access to or the use of amusement, athletic, or entertainment facilities.

(C) "Sale" does not include the:

(i) Furnishing or rendering of services except as otherwise provided in this section; or

(ii) Transfer of title to a vehicle by the vehicle owner to an insurance company as a result of the settlement of a claim for damages to the vehicle.

(D)(i) In the case of a lease or rental of tangible personal property, including motor vehicles and trailers for less than thirty (30) days, the tax shall be paid on the basis of rental or lease payments made to the lessor of the tangible personal property during the term of the lease or rental regardless of whether Arkansas gross receipts tax or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property.

(ii) In the case of a lease or rental of tangible personal property, including motor vehicles and trailers for thirty (30) days or more, the tax shall be paid on the basis of rental or lease payments made to the lessor of the tangible personal property during the term of the lease or rental unless Arkansas gross receipts tax or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property;

(19) "Seller" means every person making a sale, lease, or rental of tangible personal property or services;

(20)(A) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses.

(B) "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software;

(21) "Tax period" or "taxable period" means either the calendar period or the taxpayer's fiscal period when a taxpayer has obtained a permit from the director or from any of his or her authorized agents to use a fiscal period in lieu of a calendar period;

(22) "Taxpayer" means any person liable to remit a tax under this chapter or to make a report for the purpose of claiming any exemption from payment of a tax levied by this chapter; and

(23) "Tobacco" means a cigarette, cigar, chewing or pipe tobacco, or any other item that contains tobacco.

History. Acts 1941, No. 386, § 2; 1953, No. 387, §§ 1, 2; 1965, No. 181, § 1; 1977, No. 340, § 1; A.S.A. 1947, §§ 84-1902, 84-1902.1, 84-1902.1n; Acts 1987 (1st Ex. Sess.), No. 13, § 1; 1989, No. 510, § 5; 1995, No. 835, § 1; 1995, No. 1160, § 21; 1997, No. 1076, § 1; 1997, No. 1266, § 1; 1999, No. 1220, § 1; 2003, No. 599, § 1; 2003, No. 1273, § 4; 2007, No. 154 §§ 1, 2; 2007, No. 181, § 11; 2007, No. 550, §§ 1, 2.

Amendments. The 2003 amendment by No. 599 added present (18)(C)(ii).

The 2003 amendment by No. 1273 rewrote the introductory paragraph; added present (8), (14), and (17) and alphabetized the section; substituted "this chapter" for "this act" in present (3)(C) and (22); rewrote present (13); in present (15), inserted "fiduciary" and "or any other legal entity"; deleted former (b); and made stylistic and related changes.

The 2007 amendment by No. 154 deleted "giving away" following "sale" in former (a)(9)(D) and "giving away" following "Sale" in present (18)(B)(ii).

The 2007 amendment by No. 181 added present (1), (2), (6), (7), (12), (16), (20), and (23), and redesignated subdivisions accordingly; inserted "purchaser" in present (3)(A); in present (10), redesignated references; rewrote present (13); in present (14), substituted "(14)(B)(iii) for "(9)(B)(iii)" in (14)(B)(iii)(b) and (c), and inserted "as in effect on January 1, 2007" in (14)(B)(iv) and twice in (14)(C); rewrote present (15); deleted former (18)(D)(iii); rewrote present (19); and made related and stylistic changes.

The 2007 amendment by No. 550 deleted former (a)(9)(C)(iii) and former (18)(D)(iii).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the

undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey of Arkansas Law, Taxation, 1 U. Ark. Little Rock L.J. 258.

CASE NOTES

ANALYSIS

Constitutionality.
Consumer or User.
Doing Business.
Gross Receipts or Proceeds.
Lease.
Person.
Sale.
Seller.
Service.

Constitutionality.

The application of the sales tax to transfer of food, clothing, and services by businesses operated for profit and owned by a nonprofit charitable organization in exchange for the services of its members or employees does not violate the religion clauses of the United States and Arkansas Constitutions. *Tony & Susan Alamo Found., Inc. v. Ragland*, 295 Ark. 12, 746 S.W.2d 45 (1988), cert. denied, 488 U.S. 852, 109 S. Ct. 137, 102 L. Ed. 2d 109 (1988).

Consumer or User.

Construction contracts involved sale of materials just as it would be if contractor would agree on price of material and labor separately. *Wiseman v. Gillioz*, 192 Ark. 950, 96 S.W.2d 459 (1936) (decision under prior law).

Manufacturer of pasteboard boxes that were sold to a company for use in preparation of its packaged articles for sale to wholesaler, jobbers, or retailers who in turn sold the package in unchanged form to the ultimate consumer, cost of box being an element in cost of packaged article and computed in arriving at selling price of the finished article same as other ingredients, was not required to pay retail sales tax. *McCarroll v. Scott Paper Box Co.*, 195 Ark. 1105, 115 S.W.2d 839 (1938) (decision under prior law).

Contractor installing equipment and performing other construction work is the consumer of the materials and equipment used in fulfilling such contract and liable

for the gross receipts tax thereon. *John B. May Co. v. McCastlain*, 244 Ark. 495, 426 S.W.2d 158 (1968).

Equipment purchased by private contractors as agents of the U.S. Navy under a contract with the Navy to build an ammunition depot was not subject to the Arkansas sales tax. *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110, 74 S. Ct. 403, 98 L. Ed. 546 (1954); *Parker v. Kern-Limerick, Inc.*, 223 Ark. 464, 266 S.W.2d 298 (1954).

If a general contractor purchases a precast concrete component, the tax due is based upon the price of that component; however, if a general contractor purchases the raw materials and produces the component from those raw materials, it is taxed only on the price paid for the raw materials. *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992), cert. denied, 506 U.S. 826, 113 S. Ct. 82, 121 L. Ed. 2d 46 (1992).

Doing Business.

Corporation not licensed to do business in state that sold merchandise to residents of Arkansas at its out-of-state store and by mail, but which delivered merchandise by truck in Arkansas to purchasers, was not liable for gross receipts tax. *Thompson v. Rhodes-Jennings Furn. Co.*, 223 Ark. 705, 268 S.W.2d 376 (1954), cert. denied, 348 U.S. 872, 75 S. Ct. 108, 99 L. Ed. 686 (1954).

Gross Receipts or Proceeds.

Permitting employees of hotel who prepare and serve food to consume meals without charge, there being no agreement as to such meals in the contract of employment, did not constitute a withdrawal of merchandise from the established business for consumption or use by such person or any other person within definition of "gross receipts," and the value of such meals was therefore not taxable. *Cook v. Southwest Hotels, Inc.*, 213 Ark. 140, 209 S.W.2d 469 (1948).

If sales price for monuments erected at graves includes price for labor in erection

of monuments, owner of monument works must pay sales tax on total sales price without any deduction for labor. *Ferguson v. Cook*, 215 Ark. 373, 220 S.W.2d 808 (1949).

The withdrawal by a corporation from stock of materials manufactured in Arkansas for use in a facility of the corporation located in Arkansas is subject to a sales tax. *Georgia Pac. Corp. v. Larey*, 242 Ark. 428, 413 S.W.2d 868 (1967).

Where company hired independent haulers to deliver its product to purchasers as required by the company's f.o.b. destination contract, gross receipts tax was properly assessed on full delivery price without any deduction for freight. *Belvedere Sand & Gravel Co. v. Heath*, 259 Ark. 767, 536 S.W.2d 312 (1976), criticized, *Foote's Dixie Dandy, Inc. v. McHenry*, 270 Ark. 816, 607 S.W.2d 323, 21 A.L.R.4th 565 (1980).

Administrative regulation carried out legislative intent as expressed in definition of "gross receipts" and thus was valid. *Belvedere Sand & Gravel Co. v. Heath*, 259 Ark. 767, 536 S.W.2d 312 (1976), criticized, *Foote's Dixie Dandy, Inc. v. McHenry*, 270 Ark. 816, 607 S.W.2d 323, 21 A.L.R.4th 565 (1980).

While inspection services provided by a service agency as part of a "full service" inspection, service, and repair contract are not specifically mentioned in § 26-52-301, as are the service and repair activities, inspection services do enhance the value of a full coverage contract and increase the marketability of the taxable services provided; accordingly, the cost of the unlisted services cannot be deducted under subdivision (a)(4) of this section, from the total consideration received for the contract, and the entire amount is subject to the three percent gross receipts tax. *Ragland v. Miller Trane Serv. Agency, Inc.*, 274 Ark. 227, 623 S.W.2d 520 (1981).

Manufacturer's actions were subject to sales tax under subdivision (a)(4) of this section despite the fact that the barges were ferried to another state where prefabricated fiberglass hatch covers were installed. *Cargo Carriers, Inc. v. Ragland*, 278 Ark. 401, 646 S.W.2d 681 (1983).

Because uncollected accounts are clearly "losses" in the context of this section, they cannot be excluded in computing the tax due on gross receipts. *Little*

Rock Mun. Water Works v. Ragland, 279 Ark. 324, 651 S.W.2d 78 (1983).

Where the taxpayer billed the general contractor for components, erection charges, and delivery charges, and the Revenue Division assessed a tax deficiency based on all of these, including the delivery charges, the Revenue Division was not attempting to collect a tax on hauling services as such, but was collecting a tax on the total consideration received by the vendor for the sale of tangible personal property, which included delivery. *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992), cert. denied, 506 U.S. 826, 113 S. Ct. 82, 121 L. Ed. 2d 46 (1992).

Trial court did not err in denying car manufacturer a refund or deduction of the pro rata portion of gross receipts tax related to bad debts arising out of the sale and financing of motor vehicles as the car manufacturer was not a "taxpayer" for the purposes of the Arkansas Bad Debt Statute, § 26-52-101 et seq.; for the purposes of the motor vehicle gross receipts tax, the person liable to remit the tax was the consumer. *DaimlerChrysler Servs. N. Am., LLC v. Weiss*, 360 Ark. 188, 200 S.W.3d 405 (2004).

Trial court erred in finding that a corporation was a "taxpayer" for the purposes of § 26-52-309, commonly known as the Bad Debt Statute, and in granting a refund or deduction of the pro rata portion of gross receipts tax related to bad debts arising out of the sale and financing of motor vehicles in Arkansas; it was possible to be a taxpayer for one kind of tax, while not a taxpayer for another kind of tax. *Weiss v. Am. Honda Fin. Corp.*, 360 Ark. 208, 200 S.W.3d 381 (2004).

Lease.

Where company, for a consideration, divested itself for a period of time of the right to the possession of its portable toilets, and invested the customer with the right of possession of its property, the transactions fit within the definition of leases, and were leases subject to the gross-receipts tax. *Weiss v. Best Enters., Inc.*, 323 Ark. 712, 917 S.W.2d 543 (1996).

In determining whether a transaction constitutes a lease that is taxable under this chapter, the court looks to all of the factors involved to determine the true nature of the transaction. *Weiss v. Best*

Enters., Inc., 323 Ark. 712, 917 S.W.2d 543 (1996).

Person.

Definition of "person" as found in Sales Tax Act specifically includes this state, any county, city, municipality, school district, or any other political subdivision of the state, whereas, the Use Tax Act, does not contain any such language. In failing to define "person" the General Assembly thereby necessarily intended to exclude the state and its subdivisions from the latter act. *Commissioner of Revenues v. Arkansas State Hwy. Comm'n*, 232 Ark. 255, 337 S.W.2d 665 (1960).

Sale.

Automobiles, whether old or new, sold subsequent to the effective date of Acts 1935, No. 233 were subject to tax, unless received as part of the purchase price. *S.R. Thomas Auto Co. v. Wiseman*, 192 Ark. 584, 93 S.W.2d 138 (1936) (decision under prior law).

No tax was imposed unless transaction constituted a sale. *Wiseman v. Gillioz*, 192 Ark. 950, 96 S.W.2d 459 (1936) (decision under prior law).

Sale by retail of electricity to consumer, generally, for his use was subject to sales tax. *McCarroll v. Ozark Rural Elec. Coop. Corp.*, 201 Ark. 329, 146 S.W.2d 693 (1940) (decision under prior law).

Rental of automobiles, owned by corporation engaged in automobile rental business, to users without drivers, mostly for short periods of time, with right to terminate the rental and retake the automobile at any time was not within subdivision (a)(3) of this section. *U-Drive-'Em Serv. Co. v. Hardin*, 205 Ark. 501, 169 S.W.2d 584 (1943).

The broad statutory definition of a sale does not include every transaction in which there is a transfer of possession for a consideration; rather, this section must be read as a whole for, if the reference to a transfer of possession is applied literally in every instance, absurd results will follow. *Hervey v. Southern Wooden Box, Inc.*, 253 Ark. 290, 486 S.W.2d 65 (1972).

There was a distinct difference between the 1941 Sales Tax Act definition of "sale" and the Use Tax Act definition; however, after the 1965 amendment of the Sales Tax Act, the two acts complemented each other. *American Television Co. v. Hervey*, 253 Ark. 1010, 490 S.W.2d 796 (1973).

Although the definition of "sale" in this section includes "dues or fees to clubs," that term is absent from the tax imposing section, § 26-52-301, and therefore membership dues paid by members of a country club were not subject to gross receipt tax imposed by § 26-52-301. *Heath v. El Dorado Golf & Country Club*, 258 Ark. 664, 528 S.W.2d 394 (1975).

To establish its claim that repair parts were purchased for "resale," a taxpayer must show that the parts were purchased outside this state, that it is regularly engaged in the business of reselling goods purchased, and that the parts were purchased for resale. *Federal Express Corp. v. Skelton*, 265 Ark. 187, 578 S.W.2d 1 (1979).

When delivery of items was for purpose of transportation to the place where they would be installed, such a transaction was not a sale subject to sales tax. *Gaddy v. DLM, Inc.*, 271 Ark. 311, 609 S.W.2d 6 (1980).

The Arkansas Gross Receipts Tax is applicable when there is a transfer of either title or possession for a valuable consideration. *State, Dep't of Fin. & Admin. v. Dunhall Pharmaceuticals, Inc.*, 288 Ark. 16, 702 S.W.2d 402 (1986).

Where company gives samples of products without charge and the state is unable to show that there is a valuable consideration in the form of advertising, the distribution is not taxable. *State, Dep't of Fin. & Admin. v. Dunhall Pharmaceuticals, Inc.*, 288 Ark. 16, 702 S.W.2d 402 (1986).

Under subdivision (a)(3) of this section, the transfer of title or possession requirement must occur in the sale of tangible personal property before the tax is imposed; the legislature provided no such requirement when imposing the tax on services. *Ragland v. Allen Transformer Co.*, 293 Ark. 601, 740 S.W.2d 133 (1987), cert. denied, 486 U.S. 1007, 108 S. Ct. 1734, 100 L. Ed. 2d 197 (1988).

Meals, clothing, goods, and services furnished by retail businesses owned by a nonprofit charitable institution to members or employees who are called associates, in exchange for their work, are sales and subject to the sales tax. Transfers within a company are taxable at the value of the finished product (retail), rather than at the value of the raw materials used to make the finished product (whole-

sale). *Tony & Susan Alamo Found., Inc. v. Ragland*, 295 Ark. 12, 746 S.W.2d 45 (1988), cert. denied, 488 U.S. 852, 109 S. Ct. 137, 102 L. Ed. 2d 109 (1988).

Fifteen percent surcharge or gratuity, added to each ticket as part of employees wages, is not a sale as contemplated in subdivisions (a)(3)(A) and (E) of this section and is not subject to the gross receipts tax. *Ragland v. Meadowbrook Country Club*, 300 Ark. 164, 777 S.W.2d 852 (1989).

Neither, "services," "wages," nor "gratuities" are included as taxable transactions within the meaning of a sale as defined in the Gross Receipts Act. *Ragland v. Meadowbrook Country Club*, 300 Ark. 164, 777 S.W.2d 852 (1989).

Where a printer performed postage and mailing services as a convenience for its customers and billed its customers for the estimated cost of the postage and used the money to purchase postage and to mail the brochures pursuant to its customers' instructions, the service of printing is subject to sales tax but the postage and mailing services are not taxable under subdivision (a)(3)(E) of this section. *Pledger v. Simpson Press, Inc.*, 304 Ark. 274, 801 S.W.2d 44 (1990).

Seller.

If transaction came within terms of law, it made no difference what the seller and the buyer might be called. *Wiseman v.*

Gillioz, 192 Ark. 950, 96 S.W.2d 459 (1936) (decision under prior law).

Service.

The purchase price of a motor vehicle extended warranty contract is not taxable under § 26-52-301(3)(C)(i) nor under subdivision (4) of this section, because an extended warranty is not "service" of a motor vehicle. *State, Dep't of Fin. & Admin. v. Staton*, 325 Ark. 341, 942 S.W.2d 804 (1996).

Cited: *Cook v. Sears-Roebuck & Co.*, 212 Ark. 308, 206 S.W.2d 20 (1947); *Scurlock v. Springdale*, 224 Ark. 408, 273 S.W.2d 551 (1954); *Frank Lyon Co. v. United States*, 435 U.S. 561, 98 S. Ct. 1291, 55 L. Ed. 2d 550 (1978); *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987); *Jones v. Ragland*, 293 Ark. 320, 737 S.W.2d 641 (1987); *Dunhall Pharmaceuticals, Inc. v. State*, 295 Ark. 483, 749 S.W.2d 666 (1988); *Pledger v. Grapevine, Inc.*, 302 Ark. 18, 786 S.W.2d 825 (1990); *WSC, Inc. v. City of Jacksonville*, 302 Ark. 295, 789 S.W.2d 448 (1990); *Pledger v. Arkla, Inc.*, 309 Ark. 10, 827 S.W.2d 126 (1992); *Pledger v. Baldor Int'l, Inc.*, 309 Ark. 30, 827 S.W.2d 646 (1992); *Technical Servs. of Ark., Inc. v. Pledger*, 320 Ark. 333, 896 S.W.2d 433 (1995); *Weiss v. Central Flying Serv., Inc.*, 326 Ark. 685, 934 S.W.2d 211 (1996); *Little Rock Cleaning Sys. v. Weiss*, 326 Ark. 1007, 935 S.W.2d 268 (1996).

26-52-104. Tax additional to other taxes.

The tax imposed by this chapter shall be in addition to any or all taxes except as otherwise provided in this chapter.

History. Acts 1941, No. 386, § 8; A.S.A. 1947, § 84-1909.

CASE NOTES

Cited: *Pledger v. Halvorson*, 324 Ark. 302, 921 S.W.2d 576 (1996).

26-52-105. Administration — Rules and regulations.

(a) The administration of this chapter is vested in and shall be exercised by the Director of the Department of Finance and Administration.

(b) The director shall promulgate rules and regulations and prescribe forms for the proper enforcement of this chapter.

History. Acts 1941, No. 386, § 15; 1979, No. 401, § 48; A.S.A. 1947, § 84-1916.

26-52-106. Cost of administration of chapter — Distribution of surplus annually.

(a) The administration cost of this chapter shall not exceed three percent (3%) of the actual revenues collected.

(b) If any funds appropriated for the administration of this chapter shall remain in the hands of the Director of the Department of Finance and Administration at the end of each fiscal year that shall not have been actually used in the administration of this chapter, then the funds shall be remitted by the director to the Treasurer of State for distribution in the same manner and for the same purposes provided for in § 26-52-107.

History. Acts 1941, No. 386, § 16; A.S.A. 1947, § 84-1917.

26-52-107. Disposition of taxes, interest, and penalties.

All taxes, interest, penalties, and costs received by the Director of the Department of Finance and Administration under the provisions of this chapter shall be general revenues and shall be deposited into the State Treasury to the credit of the State Apportionment Fund. The Treasurer of State shall allocate and transfer the same to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by, and to be used for the respective purposes set forth in, the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 1941, No. 386, § 18, as added by Acts 1953, No. 118, § 32(A); A.S.A. 1947, § 84-1918.

CASE NOTES

Cities and Counties.

Cities and counties were not beneficiaries of funds arising from the sales tax until made to share by Acts 1943, No. 187, and since the act was not in effect until June 10, prior to the beginning of a new

fiscal year July 1, 1943, cities and counties could participate only in money paid by the taxpayer during the last 21 days of June. *Page v. Alexander*, 206 Ark. 479, 177 S.W.2d 415 (1943) (decision under prior law).

26-52-108. Changes in law — Notice to permit holders.

The Director of the Department of Finance and Administration shall give each gross receipts tax permit holder under § 26-52-201 written notice of any new state sales and use tax law or any change in the present state sales and use tax law within thirty (30) days after the adjournment of the General Assembly.

History. Acts 1991, No. 535, § 1.

26-52-116. [Transferred.]

A.C.R.C. Notes. This section has been renumbered as § 26-53-139.

SUBCHAPTER 2 — PERMITS

SECTION.

- 26-52-201. Permit required.
- 26-52-202. Application for permit.
- 26-52-203. Fee deposit or bond required.
- 26-52-204. Permit not assignable.
- 26-52-205. Display required.
- 26-52-206. Expiration.
- 26-52-207. Discontinuance of business —
Unpaid taxes.

SECTION.

- 26-52-208. Revocation or suspension —
Renewal.
- 26-52-209. Applicability of tax procedure
provisions.
- 26-52-210. Automatic expiration of per-
mit.

Effective Dates. Acts 1987, No. 372, § 3: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that a deposit should be required by the Commissioner of Revenue prior to the issuance of any new Arkansas Gross Receipts Tax permits and to provide a method allowing a credit against future Arkansas Gross Receipts Tax due against the deposit which has been posted. Said system shall insure the initial payment of Arkansas Gross Receipts Tax for new business and prevent the abusive use of permits for resale purchases only. Therefore, an emergency is declared to exist and this legislation shall be in effect on or after July 1, 1987."

Acts 1993, No. 620, § 5: Mar. 22, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the two hundred fifty dollar (\$250.00) deposit required to obtain a new gross receipts tax permit creates an undue burden on the party applying for such permit; that it creates an administrative burden on the Department of Finance and Administration to have this deposit as a credit to maintain and refund the deposit upon request after the appropriate time has elapsed; that a non-refundable fee of fifty dollars (\$50.00) is less of a burden on the applicant and the department; and that this act will effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being neces-

sary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 835, § 9: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas law is unclear as it applies to the taxation of contractors and subcontractors who construct and repair buildings and other improvements and structures affixed to real estate; that Arkansas gross receipts and use tax laws which impose tax on certain services to motors, electrical appliances and devices, household appliances, and machinery were never intended by the General Assembly to apply to nonmechanical, passive or manually operated building systems or components; that none of the charges made by a contractor for labor or materials used in performing such non-taxable services are properly subject to tax; that contractors and subcontractors are suffering substantial losses on audits after making best efforts to comply with existing law; and that the gross receipts and use tax laws need to be clarified to specifically exclude certain services to buildings and other improvements or structures affixed to real estate from tax. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in

full force and effect on and after July 1, 1995.”

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a

state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state’s proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

26-52-201. Permit required.

(a) It shall be unlawful for any taxpayer to transact business within this state prior to issuance and receipt of an Arkansas gross receipts tax permit from the Director of the Department of Finance and Administration.

(b) A separate permit for each business location must be obtained from the director.

(c) This permit shall be in addition to all other permits required by the Arkansas Code.

(d) Any taxpayer who engages in business without a permit, or after a permit has been suspended, shall be subject to the provisions and sanctions set forth in the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(e) The director is authorized to establish types and classifications of Arkansas gross receipts tax permits, including, not by limitation, special permits for taxpayers whose principal line of business does not include the retail selling of tangible personal property or performing taxable services.

History. Acts 1941, No. 386, §§ 12, 19; A.S.A. 1947, §§ 84-1913, 84-1919; Acts 1987, No. 372, § 1; 1995, No. 835, § 4.

CASE NOTES

Cited: Cook v. Sears-Roebuck & Co., 212 Ark. 308, 206 S.W.2d 20 (1947); Thompson v. Chadwick, 221 Ark. 720, 255 S.W.2d 687 (1953); Tony & Susan Alamo Found., Inc. v. Ragland, 295 Ark. 12, 746 S.W.2d 45 (1988); Spencer v. Langston, — F. Supp.2d —, 2006 U.S. Dist. LEXIS 23349 (E.D. Ark. Apr. 24, 2006).

26-52-202. Application for permit.

(a) Every taxpayer shall file with the Director of the Department of Finance and Administration an application for a gross receipts tax permit to conduct the taxpayer's business, setting forth such information as the director may require.

(b)(1) The application shall be signed by the owner of the business as a natural person or in the case of a corporation by a legally constituted officer of the corporation.

(2) However, a seller that registers electronically shall not be required to provide a written signature.

(c) A taxpayer is permitted to file an application through an agent if the registration is filed with the director and is made in writing.

History. Acts 1941, No. 386, § 12; A.S.A. 1947, § 84-1913; Acts 1987, No. 372, § 1; 2003, No. 1273, § 5.

Amendments. The 2003 amendment added (b)(2) and (c) and made related changes.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the re-

quirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses

additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1,

2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

CASE NOTES

Cited: Cook v. Sears-Roebuck & Co., 212 Ark. 308, 206 S.W.2d 20 (1947); Thompson v. Chadwick, 221 Ark. 720, 255 S.W.2d 687 (1953).

26-52-203. Fee deposit or bond required.

(a) The Director of the Department of Finance and Administration shall require prior to the issuance of any new Arkansas gross receipts tax permit the payment of a nonrefundable fee of fifty dollars (\$50.00), which shall be remitted with each new application for a permit.

(b) All persons doing a retail business in this state, which business is subject to the provisions of this chapter, who do not have a permanent domicile in this state, shall make a sufficient cash deposit or sufficient bond with the director to cover their annual sales tax before doing business in this state or before receiving a permit to do business in this state as provided in § 26-52-201.

(c) All revenues derived from the fees imposed by this section shall be deposited into the State Treasury as nonrevenue receipts credited to the State Central Services Fund for use by the Revenue Division of the Department of Finance and Administration.

History. Acts 1941, No. 386, §§ 12, 13; A.S.A. 1947, §§ 84-1913, 84-1914; Acts 1987, No. 372, § 1; 1993, No. 620, § 1.

26-52-204. Permit not assignable.

The permit shall not be assignable and shall be valid only for the person in whose name it is issued and for business transactions at the place designated therein.

History. Acts 1941, No. 386, § 12; A.S.A. 1947, § 84-1913; Acts 1987, No. 372, § 1.

CASE NOTES

Construction With Other Law.

To have a sales and use tax permit at a store does not preclude prosecution under § 5-64-1101 for possession of more than nine grams of pseudoephedrine away from the store. Spencer v. Langston, — F.

Supp.2d —, 2006 U.S. Dist. LEXIS 23349 (E.D. Ark. Apr. 24, 2006).

Cited: Cook v. Sears-Roebuck & Co., 212 Ark. 308, 206 S.W.2d 20 (1947); Thompson v. Chadwick, 221 Ark. 720, 255 S.W.2d 687 (1953).

26-52-205. Display required.

The permit shall at all times be conspicuously displayed at the place of business for which the permit was issued.

History. Acts 1941, No. 386, § 12; A.S.A. 1947, § 84-1913; Acts 1987, No. 372, § 1.

CASE NOTES

Construction With Other Law.

To have a sales and use tax permit at a store does not preclude prosecution under § 5-64-1101 for possession of more than nine grams of pseudoephedrine away from the store. *Spencer v. Langston*, — F.

Supp.2d —, 2006 U.S. Dist. LEXIS 23349 (E.D. Ark. Apr. 24, 2006).

Cited: *Cook v. Sears-Roebuck & Co.*, 212 Ark. 308, 206 S.W.2d 20 (1947); *Thompson v. Chadwick*, 221 Ark. 720, 255 S.W.2d 687 (1953).

26-52-206. Expiration.

All permits issued under the provisions of this chapter shall expire at the time of cessation of business at the place or location of the business within this state.

History. Acts 1941, No. 386, § 12; A.S.A. 1947, § 84-1913.

CASE NOTES

Cited: *Cook v. Sears-Roebuck & Co.*, 212 Ark. 308, 206 S.W.2d 20 (1947); *Thompson v. Chadwick*, 221 Ark. 720, 255 S.W.2d 687 (1953).

26-52-207. Discontinuance of business — Unpaid taxes.

(a)(1) Any taxpayer operating under a permit as provided in this subchapter, upon discontinuance of business by sale or otherwise, shall return the permit to the Director of the Department of Finance and Administration for cancellation together with a remittance of any unpaid or accrued taxes.

(2) Failure to surrender a permit and pay any and all accrued taxes shall be sufficient cause for the director to refuse the issuance of any permit in the future to the taxpayer to engage in or transact any other business in this state.

(3) In the case of a sale of any business, the tax shall be deemed to be due at the time of the sale of the fixtures and equipment incident to the business and shall constitute a lien against the stock and the fixtures and equipment in the hands of the purchaser thereof or any other third party until the tax is paid.

(b) The director shall not issue a permit to continue or conduct the business to the purchaser of the business until all tax claims due in the State of Arkansas under this section have been settled and paid.

History. Acts 1941, No. 386, § 12; A.S.A. 1947, § 84-1913; Acts 1987, No. 372, § 1.

CASE NOTES

Cited: Cook v. Sears-Roebuck & Co., 212 Ark. 308, 206 S.W.2d 20 (1947); Thompson v. Chadwick, 221 Ark. 720, 255 S.W.2d 687 (1953).

26-52-208. Revocation or suspension — Renewal.

(a) Whenever a holder of a permit fails to comply with any provision of this chapter, the Director of the Department of Finance and Administration shall give notice to the taxpayer of an intention to revoke the permit.

(b)(1) Within ten (10) days after receipt of the notice of intention, the taxpayer may apply to the director for a hearing in the same manner as provided for in Acts 1941, No. 386, § 10 [repealed].

(2) The hearing shall be conducted at a time and place to be designated by the director, and the taxpayer shall be entitled to introduce testimony and be represented by counsel, and the director shall determine at the hearing whether the taxpayer's permit should be revoked.

(3) In the event the taxpayer fails to apply for a hearing within ten (10) days after receipt of the notice of intention, the director may revoke such permit.

(c)(1) The taxpayer shall be entitled within thirty (30) days from the date of the order of the director revoking the permit to appeal to the circuit court in the taxpayer's county where the action shall be tried de novo.

(2) An appeal shall lie from the circuit court to the Supreme Court as in other cases provided by law.

(d) Any permit may be renewed upon the filing of proper returns and the payment of all taxes due under this chapter or removal of any other cause of revocation or suspension.

History. Acts 1941, No. 386, § 12; A.S.A. 1947, § 84-1913.

A.C.R.C. Notes. Acts 1941, No. 386, § 10, referred to in subdivision (b)(1) of

this section, was repealed by Acts 1979, No. 401, § 48. For current law, see the Arkansas Tax Procedure Act, § 26-18-101 et seq.

CASE NOTES

Revocation.

Chancery court's order approving sales tax assessment and cancelation of permit to do business not appealed from was a bar to a taxpayer's suit to annul the order. Fish v. McLeod, 206 Ark. 142, 174 S.W.2d 236 (1943).

Cited: Cook v. Sears-Roebuck & Co., 212 Ark. 308, 206 S.W.2d 20 (1947); Thompson v. Chadwick, 221 Ark. 720, 255 S.W.2d 687 (1953).

26-52-209. Applicability of tax procedure provisions.

All proceedings relative to the issuance, revocation, or suspension of a permit under this subchapter shall be governed by the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1941, No. 386, § 12; A.S.A. 1947, § 84-1913; Acts 1987, No. 372, § 1.

26-52-210. Automatic expiration of permit.

(a)(1)(A) The gross receipts tax permit of any taxpayer shall automatically expire when the taxpayer has filed twelve (12) consecutive monthly reports reporting zero (0) sales.

(B)(i) The Director of the Department of Finance and Administration shall notify the taxpayer in writing that the gross receipts tax permit has expired.

(ii) Within thirty (30) days after the date of the notice, the taxpayer shall return the permit to the director.

(2) This section shall not apply to a permit that is issued pursuant to § 26-52-201(e) to a taxpayer whose principal line of business does not include the retail selling of tangible personal property or the performing of taxable services.

(b)(1) Any taxpayer who has been notified that his or her gross receipts tax permit will expire may petition the director to retain the taxpayer's gross receipts tax permit if the taxpayer reasonably expects to engage in business within the twelve-month period immediately following the notification.

(2) The director may allow a taxpayer to retain the taxpayer's gross receipts tax permit if the taxpayer demonstrates to the director's satisfaction that the taxpayer will require a gross receipts tax permit within the following twelve (12) months to engage in business.

History. Acts 1999, No. 1031, § 1.

SUBCHAPTER 3 — IMPOSITION OF TAX

SECTION.

- 26-52-301. Tax levied.
- 26-52-302. Additional taxes levied.
- 26-52-303. Border cities or towns — Tax rate — Exemptions.
- 26-52-304. Tax levied on sales of computer software and maintenance of computer hardware.
- 26-52-305. Financial institutions.
- 26-52-306. Sales of alcoholic beverages.
- 26-52-307. Contractors as consumer users.
- 26-52-308. Receipts from certain coin-operated machines taxed.

SECTION.

- 26-52-309. Deduction for bad debts generally.
- 26-52-310. [Repealed.]
- 26-52-311. [Repealed.]
- 26-52-312. [Repealed.]
- 26-52-313. [Repealed.]
- 26-52-314. Prepaid calling service and prepaid wireless calling service.
- 26-52-315. Telecommunications and related services.
- 26-52-316. Services subject to tax.
- 26-52-317. Food and food ingredients.
- 26-52-318. Heavy equipment.

SECTION.

- 26-52-319. Natural gas and electricity used by manufacturers.
 26-52-320. Portable toilets and associated services.

SECTION.

- 26-52-321. Fishing guide services.

A.C.R.C. Notes. Acts 2007, No. 185, § 3, provided: "All existing exemptions from the gross receipts tax levied by the Arkansas Gross Receipts Act or 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., for natural gas or electricity used in manufacturing or other purposes that are otherwise provided by law shall continue in full force and effect."

Cross References. Arkansas Tourism Development Act, § 15-11-501 et seq.

Tax levy in cities adjacent to city one mile from state line, § 26-25-104.

Effective Dates. Acts 1945, No. 64, § 3: approved Feb. 21, 1945. Emergency clause provided: "It being considered necessary by the Legislature to more effectively collect Sales Tax on new and used cars as provided in this Act and to expedite such collection, that this Act should be in effect as soon as possible and it thereby being necessary for the public peace, health and protection of the State an emergency is hereby declared and this Act shall be in full force and effect immediately upon and after its passage."

Acts 1949, No. 405, § 3: Apr. 1, 1949. Emergency clause provided: "Because of the need for additional revenues for necessary operation of state services and institutions and this Act being necessary for preservation of the public peace, health and safety, an emergency is declared and this Act shall be in full force and effect from and after April 1, 1949."

Acts 1957, No. 19, § 6: Feb. 7, 1957. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas (1) that inflationary prices are having the effect of curtailing the activities of certain necessary agencies of the State Government, including the State Hospital and other eleemosynary institutions, and the University of Arkansas and the other state-supported institutions of higher learning, the Public School System, the

Public Welfare Program, and others; (2) that a minimum program of operation of the said state agencies and activities requires a large amount of state funds in excess of the amounts estimated to be available under existing revenue laws; (3) that to fail to provide additional funds will have the effect of further curtailing the activities of said agencies and programs to the great detriment to all of the people of this State; and (4) that only the provisions of this act will provide funds in amounts sufficient to alleviate the aforementioned conditions. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1957, No. 158, § 3: Mar. 5, 1957. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas (1) that inflationary prices are having the effect of curtailing the activities of certain necessary agencies of the State Government, including the State Hospital and other eleemosynary institutions, and the University of Arkansas and the other state-supported institutions of higher learning, the Public School System, the Public Welfare Program, and others; (2) that a minimum program of operation of the said state agencies and activities requires a large amount of state funds in excess of the amounts estimated to be available under existing revenue laws; (3) that to fail to provide additional funds will have the effect of further curtailing the activities of said agencies and programs to the great detriment of all of the people of this State; and (4) that only the provisions of this Act will provide funds in amounts sufficient to alleviate the aforementioned conditions. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1957, No. 233, § 3: Mar. 12, 1957. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas (1) that inflationary prices are having the effect of curtailing the activities of certain necessary agencies of the State Government, including the State Hospital and other eleemosynary institutions, and the University of Arkansas and the other state-supported institutions of higher learning, the Public School System, the Public Welfare Program, and others; (2) that a minimum program of operation of the said state agencies and activities requires a large amount of state funds in excess of the amounts estimated to be available under existing revenue laws; (3) that to fail to provide additional funds will have the effect of further curtailing the activities of said agencies and programs to the great detriment of all of the people of this State; and (4) that only the provisions of this Act will provide funds in amounts sufficient to alleviate the aforementioned conditions. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1961, No. 252, § 2: approved Mar. 14, 1961. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the present law in regard to the exemptions provided for gross receipts or gross proceeds derived from the sale of motor vehicles in border cities and incorporated towns is inequitable and thereby creates many hardships in the automobile sales industry surrounding such border cities and incorporated towns, and that only by the immediate passage and approval of this Act can this situation be alleviated. Therefore, this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage."

Acts 1963, No. 265, § 6: Mar. 18, 1963. Emergency clause provided: "It is hereby found and declared that the failure to collect Gross Receipts Tax from the gross receipts or gross proceeds derived from the operation or use of coin-operated pin-ball machines, coin-operated music machines, coin-operated mechanical games

and similar devices, gives an advantage to the operators of such devices over other operators engaged in similar operations conducted without the use of coin-operated devices, and is therefore discriminatory, resulting in a substantial loss of revenues to the State of Arkansas. Therefore, an emergency is hereby found and declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

Acts 1971, No. 214, §§ 5, 6: emergency failed to pass.

Acts 1973, No. 181, § 2: Feb. 23, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that coin-operated car washes do not require the presence of an attendant, that in order to collect the gross receipts tax an attendant would have to be employed for that sole purpose; that this requirement is unfair and discriminatory to the owners and operators of coin-operated car washes, and that only by the immediate passage of this Act will this inequity be remedied. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1973, No. 182, §§ 9, 10: Jan. 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relative to the taxation of banks and savings and loan associations is somewhat vague and indefinite, that such institutions should pay the same taxes as other business corporations in the State, and this Act is immediately necessary to clarify the laws with respect to the taxation of financial institutions and to assure that such institutions pay the same taxes as other business corporations. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved Feb. 22, 1973.

Acts 1979, No. 401, § 50: Jan. 1, 1980.

Acts 1979, No. 585, § 3: Mar. 27, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that subsection (b) of Section 3 of Act 386 of 1941 provides that the Gross

Receipts Tax applies to 'Natural or artificial gas, electricity, water, ice, steam, or any other utility or public service except transportation services', and that this language has been interpreted by the Revenue Department for 37 years as not applying to sewer or garbage service charges; that the Revenue Department now is attempting to collect the sales tax on sewer and garbage services charges and this Act is immediately necessary to clearly state that such charges are not subject to the Arkansas Gross Receipts Tax. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate protection of the public peace, health and safety shall take effect on its passage and approval."

Acts 1981, No. 983, § 3: became law without Governor's signature, Apr. 8, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that clarification of the Gross Receipts Tax Law is needed to affirm the legislative intent that the Gross Receipts Tax applicable to services in this State is not intended to apply to the repair or maintenance of railroad cars brought into the State solely and exclusively for repair within this State, and that the immediate passage of this Act is necessary to accomplish such purpose. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983 (1st Ex. Sess.), No. 63, § 3: Nov. 1, 1983. Emergency clause provided: "It is hereby found and determined by the 74th General Assembly that the Arkansas Supreme Court has held that the current method of allocating State financial aid to public elementary and secondary education is unconstitutional and must be revised to meet constitutional standards; that reallocation of existing State financial aid would cause massive disruption of the system of public elementary and secondary education in this State; that the current level of State financial aid to public elementary and secondary education is inadequate to meet the mandate of Article 14 of the Arkansas Constitution that the State maintain a general, suitable and efficient system of free public schools; that experienced faculty members at the institutions of higher education are leaving the

State of Arkansas because salary levels in Arkansas are not competitive with salaries in institutions of higher education in other states; that accreditation of certain essential programs operated by various institutions of higher education is in jeopardy because of inadequate financial support; that the present level of funding for essential State services will cause the curtailing of activities of necessary State agencies; that additional State revenues are required to alleviate these conditions. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect November 1, 1983."

Acts 1983 (1st Ex. Sess.), No. 94, § 3: Nov. 9, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that a deduction for bad debts should be allowed under Arkansas' sales tax laws; that such deduction is not authorized by law and therefore the present law is inequitable and fundamentally unfair to that extent; that this Act should go into effect immediately to correct such inequity. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 27, § 4: Feb. 11, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that in-state sellers of property and services are being discriminated against as a result of out-of-state vendors, who solicit sales by advertisements, not being required to collect and pay to the State compensating (use) tax upon such sales that, as a result of the foregoing, this State is being deprived of much-needed revenue to which it is rightfully entitled; that providers of interstate telecommunications services have not been required to collect and remit gross receipts tax on interstate access and long distance telecommunications services which are hereby declared to be subject to the gross receipts tax. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 188, § 3: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious danger of losing revenues which are necessary to provide adequate funding for schools and other essential services required by the citizens of this State and the provisions of this Act are necessary to avoid a substantial reduction in State revenues. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1987."

Acts 1987 (1st Ex. Sess.), No. 13, § 6: June 12, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the State is in serious danger of losing revenues which are necessary to provide adequate funding for schools and other essential services required by the citizens of this State and that the provisions of this Act are necessary to avoid a substantial reduction in State revenues. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 510, § 8: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that this Act establishes a new tax known as the 'Rental Vehicle Tax' and provides persons engaged in the business of renting licensed motor vehicles a credit for portion of the sales tax paid by the person on certain licensed motor vehicles purchased on or after July 1, 1989, and that for the effective administration of this act, the Act should become effective on July 1, 1989. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1989."

Acts 1989, No. 769, § 4: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious need of additional revenue for the purpose of funding critical education programs and other essential services required by the citizens of the state and the

provisions of this act are necessary to raise needed revenue. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1989."

Acts 1989 (3rd Ex. Sess.), No. 89, § 4: Nov. 17, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the application of current law results in the citizens of the State of Arkansas being placed at an economic disadvantage and inability to compete in the marketplace, thereby resulting in loss of industry and jobs to this State. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 3, § 14: May 1, 1991. Emergency clause provided: "It is hereby found and determined that the State of Arkansas is lacking adequate funds to provide for the education of its citizens and for other essential services; that increased funds must be raised to adequately provide for those needs; that certain persons are assisting taxpayers in evading or defeating the payment or collection of lawfully imposed state taxes depriving the state of needed revenues and that this act is designed to provide the necessary revenues to the state sufficient to meet these needs. Therefore, an emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective on and after May 1, 1991."

Acts 1992 (1st Ex. Sess.), Nos. 58 and 61, § 8: July 1, 1993. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that unemployment in Arkansas has reached emergency proportions, and that this situation can only be remedied by attracting new industry. Offering tax incentives is an effective method of attracting business to Arkansas. This act offers incentives which will reduce unemployment levels. Therefore, an emergency is declared to exist, and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and

effect from and after its passage and approval." Approved Mar. 19, 1992.

Acts 1992 (2nd Ex. Sess.), No. 5, § 7: Mar. 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that this act levies a tax upon certain services; that for the effective administration of this act, this act should become effective immediately that unless this emergency clause is adopted, this act may not become effective on that date. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after March 1, 1993."

Acts 1993, No. 282, § 5: Mar. 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that Act 5 of the Second Extraordinary Session of 1992 levies a gross receipts tax on the service of collecting a debt or account receivable; that this act has caused confusion as to who is subject to the tax and what constitutes taxable services in connection with the collection of debts or accounts receivable; that this act will clarify some of the confusion that exists; and that since the tax becomes effective on March 1, 1993, this act is necessary immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1059, § 5: Sept. 1, 1994.

Acts 1993, No. 1162, § 6: Apr. 14, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that this act is necessary in order to eliminate confusion and simplify the collection of tax for the rental truck industry. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1995, No. 257, § 5: Feb. 10, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the repair or remanufacture of metal platens should be exempt from the state sales tax when they are brought into this state merely for repair and then

shipped back to the state of origin; that this act so provides; and this act should go into effect immediately in order to eliminate an unfair tax burden on those Arkansas businesses which repair metal platens to be shipped back to the state of origin. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 284, § 6: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that recent court decisions resulted in disparate treatment by requiring hotels, motels and lodging houses furnishing lodging to transient guests to collect sales tax on such lodging while property management companies which provide similar services are not taxed; that this act is necessary to specify that these provisions of law apply to all entities which furnish accommodations of any type to transient guests and is designed to correct the current unequal treatment. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1995, No. 835, § 9: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas law is unclear as it applies to the taxation of contractors and subcontractors who construct and repair buildings and other improvements and structures affixed to real estate; that Arkansas gross receipts and use tax laws which impose tax on certain services to motors, electrical appliances and devices, household appliances, and machinery were never intended by the General Assembly to apply to nonmechanical, passive or manually operated building systems or components; that none of the charges made by a contractor for labor or materials used in performing such non-taxable services are properly subject to tax; that contractors and subcontractors are suffering substantial losses on audits after making best efforts to comply with existing law; and that the gross receipts and use tax laws need to be clarified to specifically exclude certain services to buildings and other improvements or

structures affixed to real estate from tax. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995."

Acts 1995, No. 1008, § 10: emergency clause failed. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas State Highway System is in dire need of improvement, rehabilitation, reconstruction and expansion; that the Arkansas State Highway and Transportation Department lacks sufficient funding for statewide highway improvements, rehabilitation, reconstruction and expansion projects; that necessary funding may be obtained by the issuance of bonds secured by an increase in the sales and use taxes; that this act is designed to provide the necessary revenues for such projects. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1263, § 5: Apr. 9, 1997. Emergency clause provided: "It is hereby found that the inclusion of the very broad language in the phrases 'service of providing a credit report' and 'service of collecting a debt or account receivable' has presented many unforeseen problems in the actual imposing of the Gross Receipts Tax upon such described services for both the Revenue Division of the Department of Finance & Administration and many businesses and professionals in Arkansas who provide all manner of these services in the aid of the credit reporting on the collection of debts and accounts receivable; and it appears that the state taxing authorities have not been able to secure universal compliance with the reporting and payment of these Gross Receipt Taxes by many businesses that are engaged in Arkansas in either credit reporting or debt collection businesses, but not with similar businesses located outside the State of Arkansas. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither

approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1359, § 41: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

Acts 1999, No. 1152, § 7: Apr. 6, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the revenues generated by taxing bingo are dwindling; that many bingo parlors have been enjoined by court order as illegal gambling operations; that bingo operators are currently required to register on July 1 of each year and pay a registration fee; that the repeal of the bingo tax provisions will also repeal the need to pay a registration fee; that taxpayers and the Department of Finance and Administration will be relieved of performing unnecessary administrative tasks related to the registration fees if the tax provisions and annual registration requirements are repealed prior to July 1, 1999. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the

veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1220, § 7: Apr. 7, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that certain Code provisions affecting the lease of property are in urgent need of clarification; that previous amendments to the Code concerning the lease of motor vehicles resulted in taxpayer confusion, particularly with respect to whether the short term rental of diesel-powered trucks was subject to gross receipts tax; and, that this act is necessary to clarify that the short-term rental of all vehicles is subject to gross receipts tax. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1348, § 7: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that due to the inability to track and audit calls made with prepaid calling cards, the current system of collecting sales tax based upon the usage of prepaid calling cards creates an administrative burden on the telecommunication companies; that this act will promote uniform tax collection on prepaid calling cards; that this act will more fairly tax telecommunications and prevent the likelihood of taxes being avoided. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999."

Acts 1999, No. 1492, § 8: if contingency met, sections 1, 2, 3, 4 and 6 shall become effective on Jan. 1, 2001, and Section 7 shall become effective on Jan. 1, 2002. Effective date clause provided: "Effective Date. The provisions of Section 5 shall be effective 90 days after adjournment. The provisions of Sections 1, 2, 3, 4, 6 and 7 shall not be effective unless; a) the Gen-

eral Assembly refers a constitutional amendment to be approved during the 2000 general election; b) the amendment provides for a limitation on the increase in the assessed value of real property after a county-wide reappraisal; and c) the amendment is approved. If those conditions are met, Sections 1, 2, 3, 4 and 6 shall become effective on January 1, 2001, and Section 7 shall become effective on January 1, 2002. Claims for refund may be filed in 2001 pursuant to §§ 26-51-601 — 26-51-608 for property taxes paid during calendar year 2000 for property assessed in calendar year 1999."

Acts 2000 (2nd Ex. Sess.), Nos. 1 and 2, § 11. Dec. 15, 2000. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Amendment 79 to the Arkansas Constitution requires the General Assembly to provide for a property tax credit of not less than \$300 for each homestead; that providing such a property tax credit results in a significant reduction in revenues for funding county services and public schools; that without an alternative source of funding counties and public schools cannot operate effectively; that an increase in the state sales and use tax provides a source of funding for counties and public schools; that this act will accomplish the purposes of Amendment 79 in providing a property tax credit and source of funding. It is necessary that this act become effective immediately in order to facilitate the administration of the property tax credit and to generate sufficient revenues to fully fund the credit. Therefore, an emergency is declared to exist and Sections 1, 2, 3, 4, 5, 6, 8 and 9 of this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 907, § 2: effective by its own terms Aug. 1, 2002.

Acts 2001, No. 949, § 2: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly

that public transportation vehicles, equipment, and facilities need to be replaced or purchased in order to ensure the safety of the citizens on the roads in the State of Arkansas. Matching federal funds enables the State of Arkansas to receive assistance in the purchase of these items. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001.”

Acts 2003, No. 1112, § 2: Apr. 7, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the taxation of amounts billed to members of health spas, health clubs, fitness clubs, and private clubs for services not otherwise taxable under the Arkansas Gross Receipts Tax Act of 1941, § 26-52-101 et seq., is contrary to the legislative intent of § 26-52-301(6); that this law clarifies the proper taxation of dues and membership fees, which excludes amounts billed to a member of a health spa, health club, fitness club, or private club that are not within the meaning of the Arkansas Gross Receipts Tax Act of 1941, § 26-52-101 et seq.; and that this act is immediately necessary to ensure that the State of Arkansas properly and correctly applies the tax on dues and membership fees. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this

act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state’s proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Acts 2003 (2nd Ex. Sess.), No. 107, § 6: July 1, 2004. The amendment was effective by its own terms on July 1, 2004.

Acts 2003 (2nd Ex. Sess.), No. 107, § 12: became law without Governor’s signature, Mar. 1, 2004. Emergency clause provided:

"It is found and determined by the General Assembly, that the provision of an equal opportunity for an adequate education to all the citizens of the state is imperative; that additional funds are immediately needed to provide an equal opportunity for an adequate education; that this act is designed to provide the additional revenues needed to provide this equal opportunity to all citizens; and that a delay in the effective date of this act will cause irreparable harm upon the provision of essential education opportunities and the proper administration of educational programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of March 1, 2004."

Acts 2005, No. 664, § 2: July 1, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that public transportation vehicles, equipment, and facilities need to be purchased and replaced in order to serve the citizens of Arkansas and ensure their safety on the roads within this state; that matching federal funds are available that enables the State of Arkansas to receive financial assistance to purchase public transportation vehicles, equipment and facilities; and that for the proper administration of this act it should become effective at the beginning of the next fiscal year. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005."

Acts 2005, No. 1693, § 3: July 1, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the payment of sales and use tax is required on the purchase of new or used heavy equipment; that Arkansas law provides that heavy equipment used in some types of professions or businesses is exempt from tax; that enforcement of the sales and use tax laws on heavy equipment is very difficult for the Department of Finance and Administration; that requiring a decal to be affixed to each piece of heavy equipment as proof that the tax has been paid or as proof that it is legally exempt would assist in the enforcement of the sales and use tax laws; and that this act would accomplish

that purpose. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005."

Acts 2005, No. 1879, § 3: Apr. 8, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that changes in technology have created confusion as to the taxability of various innovative and rapidly growing telecommunications services and that such confusion threatens to disrupt the flow of revenues that are critically needed by the state for the support of schools, to address deficiencies in school facilities as determined by the Supreme Court, to maintain prisons, and to ensure the uninterrupted provisions of critical services to the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto 1 the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 110, § 9: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of Arkansas are having to pay more in fuel costs due to the rise in oil prices; that the rise in fuel costs has resulted in an increase in the price of food and other goods; and that in order to offset these rising prices the sales and use tax rate on food and food ingredients should be reduced. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

Acts 2007, No. 154, § 7: Mar. 1, 2007. Effective date clause provided: "Sections 1-6 of this act shall be effective on the first day of the calendar month following the effective date of this act."

Acts 2007, No. 154, § 8: Feb. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the tax for free admission defeats the primary intent of a 'free' admission; that the recordkeep-

ing for the seller or person furnishing the free admission is cost prohibitive and unnecessarily burdensome to the philanthropist and that the tax does not yield significant revenues to the state to justify the expense of the recordkeeping and submission of the tax; and that this act is immediately necessary for the state to enjoy the economic benefit from persons and entities giving free tickets to tourist attractions during the springtime. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 181, § 45: Jan. 1, 2008.

Acts 2007, No. 182, § 32: Jan. 1, 2008.

Acts 2007, No. 185, § 4: Mar. 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly that the current sales and use tax on utilities consumed by manufacturers located within this state creates a competitive disadvantage, that this bill is intended to address that problem by

providing a reduced tax rate on utilities consumed by manufacturers located in this state; and that this act is immediately necessary to prevent the loss of manufacturing jobs to other states that provide lower taxes on utilities consumed in manufacturing. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 368, § 2: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the portable toilet industry is currently applying tax on tangible personal property and services differently and that in order to achieve equity in the portable toilet industry, additional legislation is needed. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

Acts 2007, No. 860, § 7: Jan. 1, 2008.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Bonds, 8 U. Ark. Little Rock L.J. 551.

26-52-301. Tax levied.

Except for food and food ingredients that are taxed under § 26-52-317, there is levied an excise tax of three percent (3%) upon the gross proceeds or gross receipts derived from all sales to any person of the following:

- (1) Tangible personal property;
- (2) Natural or artificial gas, electricity, water, ice, steam, or any other utility or public service, except transportation services, sewer services, and sanitation or garbage collection services;
- (3) The following services:
 - (A)(i) Service of furnishing rooms, suites, condominiums, townhouses, rental houses, or other accommodations by hotels, apartment hotels, lodging houses, tourist camps, tourist courts, property man-

agement companies, or any other provider of accommodations to transient guests.

(ii) As used in subdivision (3)(A)(i) of this section, "transient guests" means those who rent accommodations other than their regular place of abode on less than a month-to-month basis;

(B)(i) Service of initial installation, alteration, addition, cleaning, refinishing, replacement, and repair of:

- (a) Motor vehicles;
- (b) Aircraft;
- (c) Farm machinery and implements;
- (d) Motors of all kinds;
- (e) Tires and batteries;
- (f) Boats;
- (g) Electrical appliances and devices;
- (h) Furniture;
- (i) Rugs;
- (j) Flooring;
- (k) Upholstery;
- (l) Household appliances;
- (m) Televisions and radios;
- (n) Jewelry;
- (o) Watches and clocks;
- (p) Engineering instruments;
- (q) Medical and surgical instruments;
- (r) Machinery of all kinds;
- (s) Bicycles;
- (t) Office machines and equipment;
- (u) Shoes;
- (v) Tin and sheetmetal;
- (w) Mechanical tools; and
- (x) Shop equipment.

(ii)(a) However, the provisions of this section shall not apply to a coin-operated car wash.

(b) As used in subdivision (3)(B)(ii)(a) of this section, "coin-operated car wash" means a car wash in which the car washing equipment is activated by the insertion of coins into a slot or receptacle and the labor of washing the exterior of the car or motor vehicle is performed solely by the customer or by mechanical equipment.

(iii) Additionally, the gross receipts tax levied in this section shall not apply to the repair or maintenance of railroad parts, railroad cars, and equipment brought into the State of Arkansas solely and exclusively for the purpose of being repaired, refurbished, modified, or converted within this state.

(iv) The General Assembly determines and affirms that the original intent of subdivision (3) of this section which provides that gross receipts derived from certain services would be subject to the gross receipts tax was not intended to be applicable, nor shall Arkansas gross receipts taxes be collected, with respect to services performed

on watches and clocks which are received by mail or common carrier from outside this state and which, after the service is performed, are returned by mail or common carrier or in the repairer's own conveyance to points outside this state.

(v) Additionally, the gross receipts tax levied in this section shall not apply to the repair or remanufacture of industrial metal rollers or platens that have a remanufactured, nonmetallic material covering on all or part of the roller or platen surface which are brought into the State of Arkansas solely and exclusively for the purpose of being repaired or remanufactured in this state and are then shipped back to the state of origin.

(vi)(a) The gross receipts tax levied in this section shall not apply to the service of alteration, addition, cleaning, refinishing, replacement, or repair of commercial jet aircraft, commercial jet aircraft components, or commercial jet aircraft subcomponents.

(b) "Commercial jet aircraft" means any commercial, military, private, or other turbine or turbo jet aircraft having a certified maximum take-off weight of more than twelve thousand five hundred pounds (12,500 lbs.).

(vii) The provisions of subdivision (3)(B)(i) of this section shall not apply to the services performed by a temporary or leased employee or other contract laborer on items owned or leased by the employer. The following criteria must be met for a person to be a temporary or leased employee:

(a) There must be a written contract with the temporary employment agency, employee leasing company, or other contractor providing the services;

(b) The employee, temporary employment agency, employee leasing company, or other contractor must not bear the risk of loss for damages caused during the performance of the contract. The person for whom the services are performed must bear the risk of loss; and

(c) The temporary or leased employee or contract laborer is controlled by the employer as if he or she were a full-time permanent employee. "Control" includes, but is not limited to, scheduling work hours, designating work duties, and directing work performance.

(viii)(a) Additionally, the gross receipts tax levied in this section shall not apply to the initial installation, alteration, addition, cleaning, refinishing, replacement, or repair of nonmechanical, passive, or manually operated components of buildings or other improvements or structures affixed to real estate, including, but not limited to, the following:

- (1) Walls;
- (2) Ceilings;
- (3) Doors;
- (4) Locks;
- (5) Windows;
- (6) Glass;
- (7) Heat and air ducts;

- (8) Roofs;
- (9) Wiring;
- (10) Breakers;
- (11) Breaker boxes;
- (12) Electrical switches and receptacles;
- (13) Light fixtures;
- (14) Pipes;
- (15) Plumbing fixtures;
- (16) Fire and security alarms;
- (17) Intercoms;
- (18) Sprinkler systems;
- (19) Parking lots;
- (20) Fences;
- (21) Gates;
- (22) Fireplaces; and
- (23) Similar components which become a part of real estate after installation, except flooring.

(b) A contractor is deemed to be a consumer or user of all tangible personal property used or consumed by the contractor in providing such nontaxable services, in the same manner as when performing any other contract.

(c) This subdivision (3)(B)(viii) shall not apply to any services subject to tax pursuant to the terms of subdivision (3)(D) of this section.

(ix) The gross receipts tax levied in subdivision (3)(B)(i) of this section shall not apply to the service of initial installation of any property that is specifically exempted from the tax imposed by this chapter;

(C)(i) Service of cable television, community antenna television, and any and all other distribution of television, video, or radio services with or without the use of wires provided to subscribers or paying customers or users, including all service charges and rental charges, whether for basic service, premium channels, or other special service, and including installation and repair service charges and any other charges having any connection with the providing of these services.

(ii) The tax levied by this section does not apply to services purchased by a radio or television company for use in providing its services; and

(D)(i) Service of:

(a) Providing transportation or delivery of money, property, or valuables by armored car;

(b) Providing cleaning or janitorial work;

(c) Pool cleaning and servicing;

(d) Pager services;

(e) Telephone answering services;

(f) Lawn care and landscaping services;

(g) Parking a motor vehicle or allowing the motor vehicle to be parked;

(h) Storing a motor vehicle;

(i) Storing furs; and

(j) Providing indoor tanning at a tanning salon.

(ii) As used in subdivision (3)(D)(i) of this section:

(a) "Landscaping" means the installation, preservation, or enhancement of ground covering by planting trees, bushes and shrubbery, grass, flowers, and other types of decorative plants;

(b) "Lawn care" means the maintenance, preservation, or enhancement of ground covering of nonresidential property and does not include planting trees, bushes and shrubbery, grass, flowers, and other types of decorative plants; and

(c) "Residential" means a single family residence used solely as the principal place of residence of the owner;

(4) Printing of all kinds, types, and characters, including the service of overprinting, and photography of all kinds;

(5) Tickets or admissions to places of amusement or to athletic, entertainment, or recreational events, or fees for access to or the use of amusement, entertainment, athletic, or recreational facilities;

(6)(A) Dues and membership fees to:

(i) Health spas, health clubs, and fitness clubs; and

(ii) Private clubs within the meaning of § 3-9-202(10) which hold any permit from the Alcoholic Beverage Control Board allowing the sale, dispensing, or serving of alcoholic beverages of any kind on the premises.

(B)(i) Except as provided in subdivision (6)(B)(ii) of this section, the gross receipts derived from services provided by or through a health spa, health club, fitness club, or private club shall not be subject to gross receipts tax unless the service is specifically enumerated as a taxable service under this chapter.

(ii) The gross receipts derived by a private club from the charges to members for the preparation and serving of mixed drinks or for the cooling and serving of beer and wine shall be subject to gross receipts tax as well as any supplemental taxes as provided by law;

(7)(A) Contracts, including service contracts, maintenance agreements and extended warranties, which in whole or in part provide for the future performance of or payment for services which are subject to gross receipts tax.

(B) The seller of the contract must collect and remit the tax due on the sale of the contract except when the contract is sold simultaneously with a motor vehicle in which case the purchaser of the vehicle shall pay gross receipts tax on the purchase of the contract at the time of vehicle registration; and

(8) The total gross receipts derived from the retail sale of any device used in playing bingo and any charge for admittance to facilities or for the right to play bingo or other games of chance regardless of whether such activity might otherwise be prohibited by law.

History. Acts 1941, No. 386, § 3; 1945, No. 64, § 1; 1951 (1st Ex. Sess.), No. 8, § 1; 1957, No. 19, § 1; 1959, No. 260, § 1; 1971, No. 214, § 1; 1973, No. 181, § 1; 1977, No. 500, § 1; 1979, No. 585, § 1; 1981, No. 471, § 1; 1981, No. 983, § 1; A.S.A. 1947, §§ 84-1903, 84-1903.4; Acts 1987, No. 27, § 2; 1987, No. 188, § 1; 1989, No. 769, § 1; 1989 (3rd Ex. Sess.), No. 89, § 1; 1992 (1st Ex. Sess.), No. 58, § 2; 1992 (1st Ex. Sess.), No. 61, § 2; 1992 (2nd Ex. Sess.), No. 5, §§ 1, 2; 1993, No. 282, § 1; 1993, No. 1245, § 4; 1995, No. 257, § 1; 1995, No. 284, § 1; 1995, No. 835, § 2; 1995, No. 1040, § 1; 1997, No. 1076, § 2; 1997, No. 1252, § 1; 1997, No. 1263, § 1; 1997, No. 1359, § 32; 1999, No. 1152, § 2; 1999, No. 1348, § 1; 2001, No. 907, § 2; 2001, No. 1064, § 1; 2003, No. 1112, § 1; 2003, No. 1273, § 6; 2003 (2nd Ex. Sess.), No. 107, §§ 5, 6; 2005, No. 1879, § 1; 2007, No. 154, §§ 3, 4; 2007, No. 110, § 3.

A.C.R.C. Notes. Acts 1997, No. 1359, § 32, added a subdivision (3)(E)(ii)(g) to this section which read as follows: "The provisions of subdivision (3)(E)(i) of this section shall not be applicable to services provided in collecting dishonored checks." However, Acts 1997, No. 1263, § 1, specifically repealed the language of former subdivisions (3)(E)(i) and (ii) that applied the tax imposed by this section on debt collection services.

Publisher's Notes. Acts 1992 (2nd Ex. Sess.), No. 5, § 6, provided: "The revenues derived from the tax collected under this act shall be remitted to the State Treasurer, who shall deposit the revenues in the State Treasury as general revenues."

Amendments. The 2003 amendment by No. 1112 redesignated former (6) as present (6)(A); in present (6)(A), inserted "membership"; in (6)(A)(ii), inserted "within the meaning of § 3-9-202(10)" and added (6)(B).

The 2003 amendment by No. 1273 repealed (3)(A).

The 2003 (2nd Ex. Sess.) amendment inserted "initial installation" and "flooring" in the introductory language of (3)(C)(i); inserted "initial installation" in (3)(C)(viii)(a); deleted former (3)(C)(viii)(a)(2) and redesignated the remaining subdivisions accordingly; added "except flooring" to the end of (3)(C)(viii)(a)(23); and added (3)(C)(ix).

The 2005 amendment added (3)(A)(viii) and (3)(A)(ix).

The 2007 amendment by No. 110, substituted "Except for food and food ingredients that are taxed under § 26-52-317, there" for "There" in the introductory language.

The 2007 amendment by No. 154, § 3 rewrote (5)(B). Section 4 deleted former (5)(B) and made related changes.

Effective Dates. Acts 2001, No. 907, § 2: amendment effective by its own terms on Aug. 1, 2002.

Acts 2003 (2nd Ex. Sess.), No. 107, § 6: amendment effective by its own terms on July 1, 2004.

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regula-

tions, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state’s proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of

the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Acts 2007, No. 154, § 7, provided: “Effective Date. Sections 1-6 of this act shall be effective on the first day of the calendar month following the effective date of this act.”

RESEARCH REFERENCES

A.L.R. Sales and use tax exemption for medical supplies. 30 A.L.R.5th 494.
U. Ark. Little Rock L. Rev. Survey of

Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

CASE NOTES

ANALYSIS

- Applicability.
- Construction Materials.
- Federal Cable Act.
- Mobile Homes.
- Satellite Transmissions.
- Service.
- Sewer Services.

Applicability.

Subdivision (3)(B) of this section does not apply to the business of renting and managing privately owned houses and townhouses for individual owners. *Leathers v. Active Realty, Inc.*, 317 Ark. 214, 876 S.W.2d 583 (1994).

Entities not described in this section are not included in the services taxable under subdivision (3)(B) of this section. *Leathers v. Active Realty, Inc.*, 317 Ark. 214, 876 S.W.2d 583 (1994).

Construction Materials.

The General Assembly intended to impose tax on materials such as gravel to be used in the construction of a temporary road to an oil-extraction project at the time of the sale between the supplier and the contractor, but the materials cannot again be taxed when the contractor bills his customers for constructing the roads on the sites. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

Federal Cable Act.

Subdivision (3)(D)(i) of this section fits within the area of discretion left by the Federal Cable Communications Policy Act (47 U.S.C. § 521(1), (3)) to allow state and local communities to regulate and tax cable services as they choose. *Medlock v. Leathers*, 311 Ark. 175, 842 S.W.2d 428 (1992), cert. denied, 508 U.S. 960, 113 S. Ct. 2929, 124 L. Ed. 2d 680 (1993).

Mobile Homes.

Chancellor erred in holding that taxpayers’ mobile homes, which were attached to rented lots in a mobile home park, were fixtures and not tangible personal property subject to the gross receipts tax; evidence did not support the finding that the annexation of the mobile homes was intended to be permanent. *Pledger v. Halvorson*, 324 Ark. 302, 921 S.W.2d 576 (1996).

Satellite Transmissions.

This state, primarily a rural state, may classify between satellite and cable for taxation purposes because the state needs a satellite television transmission in those geographic areas where cable services are not feasible. *Medlock v. Leathers*, 311 Ark. 175, 842 S.W.2d 428 (1992), cert. denied, 508 U.S. 960, 113 S. Ct. 2929, 124 L. Ed. 2d 680 (1993).

Service.

The purchase price of a motor vehicle extended warranty contract is not taxable under subdivision (3)(C)(i) of this section nor under § 26-52-103(a)(4), because an extended warranty is not "service" of a motor vehicle. *State, Dep't of Fin. & Admin. v. Staton*, 325 Ark. 341, 942 S.W.2d 804 (1996).

Sewer Services.

Company that leased toilets failed to prove beyond a reasonable doubt that it was exempt from the gross-receipts tax as

a public sewer service. *Weiss v. Best Enters., Inc.*, 323 Ark. 712, 917 S.W.2d 543 (1996).

Cited: *Leathers v. A & B Dirt Movers, Inc.*, 311 Ark. 320, 844 S.W.2d 314 (1992); *Arkansas Glass Container Corp. v. Pledger*, 320 Ark. 10, 894 S.W.2d 599 (1995); *Technical Servs. of Ark., Inc. v. Pledger*, 320 Ark. 333, 896 S.W.2d 433 (1995); *Weiss v. Central Flying Serv., Inc.*, 326 Ark. 685, 934 S.W.2d 211 (1996); *Russell v. State*, 367 Ark. 557, — S.W.3d — (2006).

26-52-302. Additional taxes levied.

(a)(1) In addition to the excise tax levied upon the gross proceeds or gross receipts derived from all sales by this chapter, except for food and food ingredients that are taxed under § 26-52-317, there is levied an excise tax of one percent (1%) upon all taxable sales of property and services subject to the tax levied in this chapter.

(2) This tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(3) In computing gross receipts or gross proceeds as defined in § 26-52-103, a deduction shall be allowed for bad debts resulting from the sale of tangible personal property.

(b)(1) In addition to the excise tax levied upon the gross proceeds or gross receipts derived from all sales by this chapter, except for food and food ingredients that are taxed under § 26-52-317, there is hereby levied an excise tax of one-half of one percent (0.5%) upon all taxable sales of property and services subject to the tax levied in this chapter.

(2) This tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(3) However, in computing gross receipts or gross proceeds as defined in § 26-52-103, a deduction shall be allowed for bad debts resulting from the sale of tangible personal property.

(c)(1) Except for food and food ingredients that are taxed under § 26-52-317, there is levied an additional excise tax of one-half of one percent (0.5%) upon all taxable sales of property and services subject to the tax levied by this chapter.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by this chapter, for the collection, reporting, and payment of Arkansas gross receipts taxes.

(d)(1) Except for food and food ingredients that are taxed under § 26-52-317, there is levied an additional excise tax of seven-eighths of one percent (0.875%) upon all taxable sales of property and services subject to the tax levied by this chapter.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as prescribed by this chapter, for the collection, reporting, and payment of Arkansas gross receipts taxes.

History. Acts 1971, No. 214, § 2; 1979, No. 401, § 48; 1983 (1st Ex. Sess.), No. 63, § 1; A.S.A. 1947, § 84-1903.1; Acts 1991, No. 3, § 1; 1999, No. 1492, § 3; 2000 (2nd Ex. Sess.), Nos. 1 and 2, § 8; 2003 (2nd Ex. Sess.), No. 107, § 1; 2007, No. 110, § 4.

A.C.R.C. Notes. As to distribution of moneys collected pursuant to subsection (a) of this section to the Court-Ordered Desegregation Trust Fund, see A.C.R.C. Notes, Title 6, Chapter 20, Subchapter 1.

The amendment of this section by Acts 1999, No. 1492, § 3, added subsection (c) to the section, but made the effectiveness of the addition of the subsection contingent upon the occurrence of the following: (a) That the General Assembly refers a constitutional amendment to be approved during the 2000 general election; (b) That the amendment provides for a limitation on the increase in the assessed value of real property after a county-wide reappraisal; and (c) That the constitutional amendment is approved.

Subsection (c) of this section became effective because in House Joint Resolution 1015 of 1999 the General Assembly referred to a vote of the electors at the 2000 general election a constitutional amendment that provided for a limit on the increase in the assessed value of real property as a result of a county-wide reappraisal, and the constitutional amendment was approved. This constitutional amendment is now incorporated into the Arkansas Constitution as Amendment 79.

As enacted by Acts 2000 (2nd Ex. Sess.), Nos. 1 and 2, § 8, subdivision (c)(1) began: "Beginning January 1, 2001."

As enacted by Acts 2003 (2nd Ex. Sess.), No. 107, § 1, subdivision (d)(1) began: "Beginning March 1, 2004."

Publisher's Notes. Acts 1983 (1st Ex. Sess.), No. 108, §§ 1, 2, provided that tangible personal property which becomes a recognizable part of a completed structure or improvement to real property and

which is purchased for use or consumption in the performance of construction contracts shall be exempt from any additional gross receipts tax or compensating tax levied by the 74th General Assembly during the First Extraordinary Session, 1983, when the construction contract for which the property was purchased is entered into prior to the effective date of the act levying an additional gross receipts tax or compensating tax; for the purposes of this act "construction contract" means a contract to construct, manage, or supervise the construction, erection, or substantial modification of a building or other improvement or structure affixed to real property, and the term "construction contract" shall not mean contract to produce tangible personal property.

Amendments. The 2003 (2nd Ex. Sess.) amendment added (d).

The 2007 amendment inserted "except for food and food ingredients that are taxed under § 26-52-317" in (a)(1) and (b)(1) and substituted "Except for food and food ingredients that are taxed under § 26-52-317, there" for "There" at the beginning of (c)(1) and (d)(1).

Effective Dates. Acts 1999, No. 1492, § 8, provided:

"The provisions of Section 5 shall be effective 90 days after adjournment. The provisions of Sections 1, 2, 3, 4, 6 and 7 shall not be effective unless; a) the General Assembly refers a constitutional amendment to be approved during the 2000 general election; b) the amendment provides for a limitation on the increase in the assessed value of real property after a county-wide reappraisal; and c) the amendment is approved. If those conditions are met, Sections 1, 2, 3, 4 and 6 shall become effective on January 1, 2001, and Section 7 shall become effective on January 1, 2002. Claims for refund may be filed in 2001 pursuant to §§ 26-51-601 — 26-51-608 for property taxes paid during calendar year 2000 for property assessed in calendar year 1999."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Constitutional Law, 14 U. Ark. Little Rock L.J. 301.

CASE NOTES

Cited: Arkansas Writers' Project, Inc. v. Ragland, 481 U.S. 221, 107 S. Ct. 1722, 95 L. Ed. 2d 209 (1987).

26-52-303. Border cities or towns — Tax rate — Exemptions.

(a) The rate of tax shall be one percent (1%) above the state sales tax rate as levied by the General Assembly, by initiatives enacted by the people of the State of Arkansas, and by amendments to the Arkansas Constitution if:

(1) An Arkansas city or incorporated town is divided by a state line from an incorporated city or town in an adjoining state;

(2) The city or town in the adjoining state is of greater population than the Arkansas city or town;

(3) A tax imposed in the adjoining state is in the nature of a selective sales tax or limited to specific items as a special excise tax; and

(4) The border city has voted to levy an additional one percent (1%) gross receipts tax in the city in lieu of paying state income taxes by individuals who are residents of the city as authorized by § 26-52-601 et seq.

(b) With respect to a motor vehicle sold in any such city or incorporated town, the exemption authorized in this section shall be applicable only to a motor vehicle sold to and registered by a bona fide resident of such an Arkansas city or incorporated town and shall not be applicable to a motor vehicle sold to a nonresident.

(c)(1) The Director of the Department of Finance and Administration shall require any person claiming this exemption to file a sworn statement in writing that the person is a resident of that city or incorporated town and such other information as the director may determine is necessary to establish the residence of the person.

(2) Any person filing a false statement or otherwise falsely obtaining or assisting any other person to falsely obtain the benefits of the exemption authorized in this section upon conviction shall be fined in a sum of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

History. Acts 1941, No. 386, § 4; 1957, No. 158, § 1; 1957, No. 233, § 1; 1961, No. 252, § 1; 1965, No. 122, § 1; 1971, No. 214, § 2; 1979, No. 401, § 48; 1983 (1st Ex. Sess.), No. 63, § 1; A.S.A. 1947, §§ 84-1903.1, 84-1904; Acts 1991, No. 3, § 2;

1995, No. 1008, § 3; 1999, No. 1492, § 5; 2003, No. 1273, § 7.

Amendments. The 2003 amendment rewrote (a); deleted former (b); and redesignated former (c) and (d) as present (b) and (c), respectively.

Effective Dates. Acts 1999, No. 1492, § 8, provided:

"The provisions of Section 5 shall be effective 90 days after adjournment. The provisions of Sections 1, 2, 3, 4, 6 and 7 shall not be effective unless; a) the General Assembly refers a constitutional amendment to be approved during the 2000 general election; b) the amendment provides for a limitation on the increase in the assessed value of real property after a county-wide reappraisal; and c) the amendment is approved. If those conditions are met, Sections 1, 2, 3, 4 and 6 shall become effective on January 1, 2001, and Section 7 shall become effective on January 1, 2002. Claims for refund may be filed in 2001 pursuant to §§ 26-51-601 — 26-51-608 for property taxes paid during calendar year 2000 for property assessed in calendar year 1999."

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for

membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

CASE NOTES

Exemptions.

A sale by an Arkansas corporation located in a city adjoined to a city across the state line in a state with no sales tax is exempt from taxation under this section even though the item sold is delivered outside the city limits of either city. *Commis-*

sioner of Revenues v. Dillard's, Inc., 224 Ark. 826, 276 S.W.2d 424 (1955).

Cited: *Frank Lyon Co. v. United States*, 435 U.S. 561, 98 S. Ct. 1291, 55 L. Ed. 2d 550 (1978); *Southern Steel & Wire Co. v. Wooten*, 276 Ark. 37, 631 S.W.2d 835 (1982).

26-52-304. Tax levied on sales of computer software and maintenance of computer hardware.

(a) The excise tax levied by this chapter and by any act supplemental thereto, is levied on gross receipts or gross proceeds received from the following:

(1)(A) Sales of computer software, including prewritten computer software, which shall be taxed as sales of tangible personal property.

(B) As used in this section:

(i) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;

(ii)(a) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(b) "Computer software" does not include software that is delivered electronically or by load and leave;

(iii) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media;

(iv) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(v) "Load and leave" means delivery to the purchaser by use of a tangible storage media in which the tangible storage media is not physically transferred to the purchaser; and

(vi) "Prewritten computer software" means computer software, including prewritten upgrades, which is designed and developed by the author or other creator to the specifications of a specific purchaser; and

(2) Service of repairing or maintaining computer equipment or hardware in any form.

(b) It is found and determined by the General Assembly that technological advances in the computer industry have created an uncertainty as to whether sales of computer software constitute a transfer of tangible personal property.

(c) This section is not intended to affect the taxability of any sales of computer software prior to February 9, 1984.

History. Acts 1983 (1st Ex. Sess.), No. 88, §§ 1, 3; A.S.A. 1947, §§ 84-1903.5, 84-1903.5n; Acts 2007, No. 181, § 12.

Amendments. The 2007 amendment added (a)(1)(B); rewrote present (a)(1)(A); and made related changes.

Effective Dates. Acts 2007, No. 181, § 1: Jan. 1, 2008, by its own terms.

Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

RESEARCH REFERENCES

A.L.R. Computer software or printout transactions as subject to state sales or use tax. 36 A.L.R.5th 133.

Am. Jur. 71 Am. Jur. 2d State Tax. § 264.5.

26-52-305. Financial institutions.

Sales of tangible personal property and services to financial institutions shall be subject to the Arkansas gross receipts tax levied in this chapter the same as such sales to other business corporations.

History. Acts 1973, No. 182, § 6; A.S.A. 1947, § 84-1937.

Publisher's Notes. For definitions applicable to, and legislative intent concerning, this section, see §§ 26-26-1502 and 26-50-101.

Effective Dates. Acts 1973, No. 182, § 9 provided that this act shall be in effect on and after January 1, 1973, and shall apply to tax years after said date.

26-52-306. Sales of alcoholic beverages.

All sales of beer, wine, liquor, or any intoxicating beverages shall be regularly reported by vendors as taxable receipts under the provisions of this chapter.

History. Acts 1941, No. 386, § 4; 1949, No. 405, § 1; A.S.A. 1947, § 84-1904.

Publisher's Notes. Acts 1949, No. 405, § 2, provided that this act shall be cumulative and a repeal only of the law which

exempts the proceeds from the sales of beer, wine, liquor, and/or any intoxicating beverage from the Gross Receipts Tax Law.

CASE NOTES

Cited: Frank Lyon Co. v. United States, 435 U.S. 561, 98 S. Ct. 1291, 55 L. Ed. 2d 550 (1978); Southern Steel & Wire Co. v. Wooten, 276 Ark. 37, 631 S.W.2d 835 (1982).

26-52-307. Contractors as consumer users.

(a)(1) Sales of services and tangible personal property, including materials, supplies, and equipment, made to contractors who use them in the performance of any contract are declared to be sales to consumers or users and not sales for resale.

(2) Subsequent transfers of title or possession of such property used in the performance of a contract by contractors are not subject to the tax imposed by this chapter.

(b) Provided that, if the performance of a contract or any portion thereof by a contractor constitutes the performance of a taxable service under the terms of § 26-52-301(3), then the entire gross proceeds or gross receipts derived from the performance of such taxable services, including the sale or transfer of title or possession of any materials or supplies used or consumed in performing such taxable services shall be subject to the tax imposed by this chapter.

(c) Contractors shall be entitled to receive a gross receipts tax credit, tax offset, or refund for any gross receipts tax or use tax paid on materials or supplies used or consumed by them which become a part of real estate in performing taxable services.

History. Acts 1941, No. 386, § 3; 1945, 500, § 1; A.S.A. 1947, § 84-1903; Acts No. 64, § 1; 1959, No. 260, § 1; 1977, No. 1995, No. 835, § 3.

CASE NOTES

ANALYSIS

Constitutionality.
Federal Contracts.
Materials.

Constitutionality.

Collection of sales tax on sale of materials by contractor to builder involved in contract made prior to effective date of sales tax law was not unconstitutional as impairing the obligation of the contract. *Wiseman v. Gillioz*, 192 Ark. 950, 96 S.W.2d 459 (1936) (decision under prior law).

Federal Contracts.

Equipment purchased by private contractors as agents of the U.S. Navy under a contract with the Navy to build an ammunition depot was not subject to the Arkansas sales tax. *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110, 74 S. Ct. 403, 98 L.

Ed. 546 (1954); *Parker v. Kern-Limerick, Inc.*, 223 Ark. 464, 266 S.W.2d 298 (1954).

Materials.

General Assembly intended to impose the tax on materials, such as gravel to be used in the construction of a temporary road to an oil-extraction project, at the time of the sale between the supplier and the contractor, but the materials cannot again be taxed when the contractor bills his customers for constructing the roads on the sites. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

Cited: *U-Drive-Em Serv. Co. v. Hardin*, 205 Ark. 501, 169 S.W.2d 584 (1943); *Commissioner of Revenues v. Belote*, 226 Ark. 295, 289 S.W.2d 665 (1956); *Republic Steel Corp. v. McCastlain*, 240 Ark. 979, 403 S.W.2d 90 (1966); *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992).

26-52-308. Receipts from certain coin-operated machines taxed.

(a) Every person engaged in the business of owning, operating, or leasing coin-operated pinball machines, coin-operated music machines, coin-operated mechanical games, and all other similar devices, shall:

(1) Obtain and hold a permit as provided by this chapter; and

(2) Make a monthly report and remittance of gross receipts tax of three percent (3%) of the gross receipts or gross proceeds derived from the operation or use of coin-operated pinball machines, coin-operated music machines, coin-operated mechanical games, and similar devices.

(b)(1) The provisions of this section shall be cumulative to the provisions of this chapter.

(2) The purpose of this section is that the gross receipts tax levied by this chapter shall apply to gross receipts or gross proceeds derived from the operation or use of coin-operated pin-ball machines, coin-operated music machines, coin-operated mechanical games, and all other similar devices.

History. Acts 1963, No. 265, §§ 1, 2, 4;
A.S.A. 1947, §§ 84-1930, 84-1930n, 84-1932.

26-52-309. Deduction for bad debts generally.

(a)(1) A taxpayer is allowed a deduction from taxable sales for a bad debt.

(2) Any deduction taken under this section that is attributed to a bad debt shall not include interest.

(b) The federal definition of "bad debt" in 26 U.S.C. § 166, as in effect on January 1, 2007, is the basis for calculating a bad debt deduction under this section except that the amount calculated pursuant to 26 U.S.C. § 166 shall be adjusted to exclude:

- (1) A financing charge or interest;
- (2) A sales or use tax charged on the purchase price;
- (3) An uncollectible amount on property that remains in the possession of the taxpayer or seller, until the full purchase price is paid; and
- (4) An expense incurred in attempting to collect any debt or repossessed property.

(c)(1) A bad debt may be deducted on the sales and use tax return of a taxpayer for the tax period during which:

(A) The bad debt is written off as uncollectible in the taxpayer's books and records; and

(B) The taxpayer is eligible to deduct the bad debt for federal income tax purposes if the taxpayer or seller kept accounts on a cash basis or could be eligible to be claimed if the taxpayer or seller kept accounts on an accrual basis.

(2) For purposes of this subsection, a taxpayer who is not required to file a federal income tax return may deduct a bad debt on a sales and use tax return filed for the period in which the bad debt is written off as uncollectible in the taxpayer's books and records if the taxpayer would be eligible for a bad debt deduction for federal income tax purposes if the taxpayer were required to file a federal income tax return.

(d) If a bad debt deduction under this section is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax imposed by this chapter on the amount collected shall be paid and reported on the sales and use tax return filed for the tax period in which the collection is made.

(e)(1) If the amount of bad debt exceeds the amount of taxable sales for the tax period during which the bad debt is written off, the taxpayer may file a claim for a refund.

(2) The refund claim shall be filed within three (3) years from the due date of the sales and use tax return on which the bad debt could first be claimed.

(f)(1) If filing responsibilities have been assumed by a certified service provider, the certified service provider may claim, on behalf of the taxpayer, any bad debt deduction provided by this section.

(2) The certified service provider shall credit or refund the full amount of any bad debt deduction or refund received to the taxpayer.

(g) For the purposes of reporting a payment received on a previously claimed bad debt, any payment made on a debt or account is applied first proportionally to the taxable price of the tangible personal property or service and the sales tax on the tangible personal property or service and second to interest, service charges, and any other charges.

(h) If the books and records of a taxpayer claiming a bad debt deduction under this section support an allocation of the bad debt among the states which are members of the Streamlined Sales and Use Tax Agreement, the allocation is permitted.

(i) Except as provided in subsection (f) of this section, the only party entitled to a bad debt deduction or refund pursuant to this section is the taxpayer that originally reported and remitted the tax in question.

History. Acts 1983 (1st Ex. Sess.), No. 94, § 1; A.S.A. 1947, § 84-1950; Acts 2003, No. 1273, § 8; 2007, No. 181, § 13.

Amendments. The 2003 amendment inserted the subdivision designations in (a); inserted "on the return ... income tax purposes" in (a)(1); added (b)(1)(B); substituted "return filed for the period in which the collection is made" for "next return due after the collection" in (e); and added (f).

The 2007 amendment rewrote the section.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given.

These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

CASE NOTES

Applicability.

Trial court did not err in denying car manufacturer a refund or deduction of the pro rata portion of gross receipts tax related to bad debts arising out of the sale and financing of motor vehicles as the car manufacturer was not a “taxpayer” for the purposes of the Arkansas Bad Debt Statute, § 26-52-101 et seq. *DaimlerChrysler Servs. N. Am., LLC v. Weiss*, 360 Ark. 188, 200 S.W.3d 405 (2004).

Trial court erred in finding that a corporation was a “taxpayer” for the purposes of this section and in granting a refund or deduction of the pro rata portion of gross receipts tax related to bad debts arising out of the sale and financing of motor vehicles in Arkansas; it was possible to be a taxpayer for one kind of tax, while not a taxpayer for another kind of tax. *Weiss v. Am. Honda Fin. Corp.*, 360 Ark. 208, 200 S.W.3d 381 (2004).

26-52-310. [Repealed.]

Publisher’s Notes. This section, concerning short-term rentals of tangible personal property, was repealed by Acts 2007, No. 182, § 2. The section was derived

from Acts 1987 (1st Ex. Sess.), No. 13, §§ 2, 4; 1989, No. 510, §§ 2-4; 1991, No. 1026, § 1; 1999, No. 1220, § 2.

26-52-311. [Repealed.]

Publisher’s Notes. This section, concerning rental vehicle tax, was repealed by Acts 2007, No. 182, § 3. The section was derived from Acts 1989, No. 510, §§ 1,

3, 4; 1993, No. 1059, § 1; 1993, No. 1152, § 1; 1993, No. 1162, § 1; 1999 No. 1220, § 3; 2001, No. 949, § 1; 2003 (2nd Ex. Sess.), No. 107, § 2; 2005, No. 664, § 1.

26-52-312. [Repealed.]

Publisher’s Notes. This section, concerning residential moving tax, was repealed by Acts 2007, No. 182, § 4. The

section was derived from Acts 1993, No. 1162, § 2.

26-52-313. [Repealed.]

Publisher’s Notes. This section, concerning long-term rental vehicle tax, was repealed by Acts 2007, No. 182, § 5. The

section was derived from Acts 1997, No. 1076, § 3.

26-52-314. Prepaid calling service and prepaid wireless calling service.

(a) Sales of a prepaid calling service or a prepaid wireless calling service and the recharge of a prepaid calling service or a prepaid wireless calling service shall be subject to the Arkansas gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) As used in this subchapter:

(1) “Prepaid calling service” means the right to exclusively access a telecommunication service, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed and that

is sold in predetermined units or dollars of which the number declines with use in a known amount;

(2) "Prepaid telephone calling card" or "prepaid authorization number" mean the exclusive purchase of telephone or telecommunications services, paid for in advance, which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed;

(3) "Prepaid wireless calling service" means a telecommunication service that provides the right to utilize a mobile wireless service as well as other non-telecommunications services, including the download of a digital product delivered electronically and content and ancillary services, which must be paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount; and

(4) "Recharge" means the purchase of additional telephone or telecommunication services for a previously purchased prepaid calling service or prepaid wireless calling service.

(c)(1) A sale of a prepaid calling service or a prepaid wireless calling service or the recharge of a prepaid calling service or a prepaid wireless calling service is subject to gross receipts tax at the point of sale by the retail vendor.

(2) If the sale or recharge of a prepaid calling service or a prepaid wireless calling service does not take place at the retail vendor's place of business, it shall be sourced in accordance with § 26-52-521(b).

(d) The gross receipts tax levied by this section on the sale of a prepaid calling service or a prepaid wireless calling service and the recharge of a prepaid calling service or a prepaid wireless calling service shall be due on all such sales occurring on or after July 1, 1999.

(e) The Director of the Department of Finance and Administration shall promulgate rules to implement this section.

History. Acts 1999, No. 1348, § 2; 2007, No. 181, § 44; 2007, No. 827, § 221.

A.C.R.C. Notes. Present subsection (d) was also amended by Act 2007, No. 827, § 221. However, pursuant to Acts 2007, No. 827, § 240, present subsection (d) is set out as amended by Acts 2007, No. 181, § 44.

Amendments. The 2007 amendment by No. 181 substituted "Prepaid calling service and prepaid wireless service calling service" for "Prepaid telephone calling cards" in the section heading; substituted "a prepaid calling service or a prepaid wireless calling service" for "prepaid telephone calling cards or prepaid authorization numbers" or similar language twice

in (a), twice in (c)(1), once in (c)(2), and twice in (d)(1); in (a), deleted "Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and by any act supplemental to the" following "tax levied by the," and added "and the compensating use tax ... § 26-53-101 et seq."; inserted present (b)(1) and (b)(3), redesignated the remaining subdivisions of (b) accordingly, and substituted "for a previously purchased ... calling service" for "without having to acquire a different prepaid telephone calling card or prepaid authorization number" in present (b)(4); rewrote (c)(2); added (e); and made related changes.

The 2007 amendment by No. 827 deleted (d)(2).

26-52-315. Telecommunications and related services.

(a) The gross receipts or gross proceeds derived from the sale of the following are subject to the gross receipts tax levied by this chapter:

(1) Any intrastate, interstate, and international telecommunications service that is sourced in this state in accordance with subsection (d) of this section;

(2) Any ancillary service; and

(3) Any installation, maintenance, or repair service of telecommunication equipment.

(b) The following services shall not be taxable under this section:

(1) Any interstate or international private communications service;

(2) Any interstate or international 800 service or 900 service; or

(3)(A) Any prepaid calling service or prepaid wireless calling service.

(B) However, prepaid calling service and prepaid wireless calling service are taxed under § 26-52-314.

(c)(1)(A) The Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. §§ 116-126, as in effect on January 1, 2007, is adopted in its entirety.

(B) All charges for mobile telecommunications services are deemed to be provided by the customer's home service provider and sourced to the customer's place of primary use and are subject to gross receipts tax based upon the customer's place of primary use as determined by the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. §§ 116-126, as in effect on January 1, 2007.

(2)(A)(i) Any customer who alleges that an amount of tax, charge, or fee or that the assignment of the place of primary use or taxing jurisdiction included on a billing is erroneous shall notify the home service provider in writing.

(ii) The customer must include the street address for the customer's place of primary use, the account name and number for which the correction of tax assignment is sought, a description of the alleged error, and any other information requested by the home service provider necessary to process the request.

(B)(i) The home service provider shall conduct a review of its records and the electronic database or enhanced zip code used to determine the place of primary use within sixty (60) days of receiving the notice from its customer.

(ii) If it is determined that the amount of the tax, charge, or fee or that the assignment of the place of primary use or taxing jurisdiction is in error, the home service provider shall correct the error and refund or credit the amount of tax, charge, or fee erroneously collected from the customer for a period of up to three (3) years.

(iii) If it is determined that the amount of the tax, charge, or fee or assignment of the place of primary use or taxing jurisdiction is correct, the home service provider shall provide a written explanation to the customer.

(C) A customer seeking correction of assignment of place of primary use or taxing jurisdiction or a refund or credit of taxes, charges,

or fees erroneously collected by the home service provider must seek to have the error corrected under subdivision (c)(2)(A) of this section before any cause of action arises as a result of the error.

(3)(A) Charges for nontaxable services that are aggregated with other charges for communications services that are taxable and are not separately stated on the bill or invoice shall not be subject to the gross receipts tax if the seller can reasonably identify the nontaxable charges on the seller's books and records kept in the regular course of business.

(B) If the nontaxable charges cannot reasonably be identified, the gross receipts from the sales of both taxable and nontaxable communications services billed on a combined basis shall be attributed to the taxable communications services.

(C) The burden of proving nontaxable receipts or charges is on the seller of the communications services.

(d)(1) Except for the telecommunications services in subdivision (d)(3) of this section, the sale of telecommunications services sold on a call-by-call basis shall be sourced to:

(A) Each state, county, or city jurisdiction where the call originates and terminates in that jurisdiction; or

(B) Each state, county, or city where the call either originates or terminates and in which the service address is also located.

(2) Except for the telecommunications services in subdivision (d)(3) of this section, a sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

(3) The sale of the following telecommunication services shall be sourced to each state, county, or city as follows:

(A) A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. §§ 116-126, as in effect on January 1, 2007;

(B) A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either:

(i) The seller's telecommunications system; or

(ii) Information received by the seller from its service provider if the system used to transport the signals is not that of the seller;

(C)(i) A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with § 26-52-521(b).

(ii) Except for a sale of prepaid wireless calling service that is a prepaid telecommunications service, the rule provided in § 26-52-521(b)(5) shall include as an option the location associated with the mobile telephone number; or

(D) A sale of a private communication service is sourced as follows:

(i) Service for a separate charge related to a customer channel termination point is sourced to each state, county, or city in which the customer channel termination point is located;

(ii) Service where all customer termination points are located entirely within one (1) jurisdiction or levels of jurisdiction is sourced in the state, county, and city in which the customer channel termination points are located;

(iii) Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of a channel are separately charged is sourced fifty percent (50%) in each state, county, and city in which the customer channel termination points are located; or

(iv) Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

(4) The sale of an ancillary service is sourced to the customer's place of primary use.

(e) As used in this section:

(1) "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 C.F.R. § 22.99, as in effect on January 1, 2007, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;

(2) "Ancillary service" means a service that is associated with or incidental to the provision of a telecommunications service, including without limitation detailed telecommunications billing, directory assistance, vertical service, and voice mail services;

(3) "Call-by-call basis" means any method of charging for a telecommunications service when the price is measured by individual calls;

(4) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;

(5)(A) "Customer" means the person or entity that contracts with the seller of a telecommunications service.

(B) If the end user of a telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service, but this subdivision (e)(5)(B) only applies for the purpose of sourcing sales of a telecommunications service under subsection (d) of this section.

(C) "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;

(6) "Customer channel termination point" means the location where the customer either inputs or receives the communications;

(7)(A) "End user" means the person who utilizes the telecommunications service.

(B) In the case of an entity, "end user" means the individual who utilizes the telecommunications service on behalf of the entity;

(8) "Home service provider" means the same as that term is defined in the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. § 124(5), as in effect on January 1, 2007;

(9)(A) "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively.

(B) United States includes the District of Columbia or a United States territory or possession;

(10) "Interstate" means a telecommunications service that originates in one (1) United States state or a United States territory or possession and terminates in a different United States state or a United States territory or possession;

(11) "Intrastate" means a telecommunications service that originates in one (1) United States state or a United States territory or possession and terminates in the same United States state or a United States territory or possession;

(12) "Mobile telecommunications service" means the same as that term is defined in the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. § 124(7), as in effect on January 1, 2007;

(13)(A) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

(B) In the case of a mobile telecommunications service, "place of primary use" must be within the licensed service area of the home service provider;

(14)(A) "Postpaid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card or by charge made to which a telephone number which is not associated with the origination or termination of the telecommunications service.

(B) "Postpaid calling service" includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service;

(15) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(16) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services, including the downloading of digital products delivered electronically, content, and ancillary services that must be paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(17) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points regardless of the manner in which the channel or channels are connected and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels;

(18)(A) "Service address" means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates regardless of where the call is billed or paid.

(B) If the location in subdivision (e)(18)(A) of this section is not known, "service address" means the origination point of the signal of the telecommunications service first identified by either the seller's telecommunications system or in information received by the seller from its service provider if the system used to transport the signals is not that of the seller.

(C) If the location in subdivisions (e)(18)(A) and (B) of this section is not known, "service address" means the location of the customer's place of primary use;

(19)(A) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point or between or among points.

(B) "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added.

(C) "Telecommunications service" does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser when such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising, including but not limited to directory advertising;

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii)(a) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider.

(b) Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47

U.S.C. § 522(6), as in effect on January 1, 2007, and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. § 20.3, as in effect on January 1, 2007;

(viii) Ancillary services; or

(ix) A digital product delivered electronically, including but not limited to software, music, video, reading material, or a ring tone;

(20) "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call; and

(21)(A) "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service.

(B) "900 service" does not include:

(i) The charge for collection services provided by the seller of the telecommunications service to the subscriber; or

(ii) Service or product sold by the subscriber to the subscriber's customer.

(f) The Department of Finance and Administration shall promulgate rules to implement this section.

History. Acts 2003, No. 1273, § 9; 2005, No. 1879, § 2; 2007, No. 181, § 14; 2007, No. 860, § 2.

Amendments. The 2005 amendment added (b)(4).

The 2007 amendment by No. 181 inserted "and related" in the section heading; rewrote (a) through (c) as present (a) and (b), added present (d)(4), (e)(2), (e)(9) through (11), (e)(16), (e)(19) through (21), and (f), and redesignated subdivisions accordingly; inserted "as in effect January 2007" or similar language in (c)(1)(A), (c)(1)(B), (d)(3)(A), (e)(1), (e)(8), and (e)(12); substituted "(c)(2)(A)" for "(d)(2)(A)" in present (c)(ii)(C); substituted "(d)(3)" for "(e)(3)" in present (d)(1) and (d)(2); inserted "or a sale of a prepaid wireless calling service" in present (d)(3)(C)(i); substituted "prepaid wireless calling service" for "mobile telecommunications service" in present (d)(3)(C)(ii); substituted "(e)(5)(B)" for "(f)(4)(B)" and "(d) for (e)" in present (e)(5)(B); inserted "except a prepaid wireless calling service" in present (e)(14)(B); in present (e)(18), substituted "(e)(18)(A)" for "(f)(13)(A)" in (e)(18)(B) and substituted "(e)(18)(A) and (B)" for "(f)(13)(A) and (B)" in (e)(18)(C); and made related changes.

The 2007 amendment by No. 860 added "or prepaid wireless calling service" at the

end of (b)(3)(A); and substituted "and prepaid wireless calling service are" for "is" in (b)(3)(B).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the

Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member

of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 181, § 45, provided: "Sections 1 through 43 of this act are effective on January 1, 2008."

Acts 2007, No. 860, § 7, provided: "Sections 1–6 of this act will become effective on January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

26-52-316. Services subject to tax.

(a) The gross proceeds or gross receipts derived from the following services are subject to this chapter:

- (1) Wrecker and towing services;
- (2) Collection and disposal of solid wastes;
- (3) The cleaning of parking lots and gutters;
- (4) Dry cleaning and laundry services;
- (5) Industrial laundry services;
- (6) Mini-warehouse and self-storage rental services;
- (7) Body piercing, tattooing, and electrolysis services;
- (8) Pest control services;
- (9) Security and alarm monitoring services;
- (10) Boat storage and docking fees;
- (11) The furnishing of camping spaces or trailer spaces at public or privately-owned campgrounds, except for federal campgrounds, on less than a month-to-month basis;
- (12) Locksmith services; and
- (13) Pet grooming and kennel services.

(b)(1) As used in this section, "locksmith services" means repairing, servicing, or installing locks and locking devices, whether the locks and locking devices are:

- (A) Incorporated into real property;
- (B) Incorporated into tangible personal property; or
- (C) Separate and apart from other property.

(2) "Locksmith services" also includes unlocking locks or locking devices for another person.

(3) "Locksmith services" shall not include the initial installation of locks by a contractor in new construction.

History. Acts 2003 (2nd Ex. Sess.), No. 107, § 7. Sess.), No. 107, § 6: amendment effective by its own terms on July 1, 2004.

Effective Dates. Acts 2003 (2nd Ex

26-52-317. Food and food ingredients.

(a)(1) The Director of the Department of Finance and Administration shall determine the following conditions:

(A) That federal law authorizes the state to collect sales and use tax from some or all of the sellers that have no physical presence in the State of Arkansas and that make sales of taxable goods and services to Arkansas purchasers;

(B) That initiating the collection of sales and use tax from these sellers would increase the net available general revenues needed to fund state agencies, services, and programs; and

(C)(i) That during a six-month consecutive period, the amount of net available general revenues attributable to the collection of sales and use tax from sellers that have no physical presence in the State of Arkansas is equal to or greater than one hundred fifty percent (150%) of sales and use tax collected under subsection (c) of this section and § 26-53-145 on food and food ingredients.

(ii) The director shall make the determination under subdivision (a)(1)(C)(i) of this section on a monthly basis following the determination that the conditions under subdivision (a)(1)(A) of this section have been met.

(2) When the director finds that all of the conditions in subdivision (a)(1) of this section have been met, then the gross receipts or gross proceeds taxes levied under subsection (c) of this section shall be levied at the rate of zero percent (0%) on the sale of food and food ingredients beginning on the first day of the second calendar month following the determination of the director.

(b) As used in this section:

(1) "Alcoholic beverage" means a beverage that is suitable for human consumption and contains five-tenths of one percent (0.5%) or more of alcohol by volume;

(2) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one (1) or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subdivision (b)(2)(A), and is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(B) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36, as it existed on January 1, 2007;

(3)(A) "Food" and "food ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(B) "Food" and "food ingredients" do not include an alcoholic beverage, tobacco, a dietary supplement, or prepared food;

(4)(A) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii)(a) Food sold with an eating utensil provided by the seller, including a plate, knife, fork, spoon, glass, cup, napkin, or a straw.

(b) As used in this subdivision (b)(4)(A)(iii), "plate" does not include a container or packaging used to transport the food.

(B) "Prepared food" does not include food that is only cut, repackaged, or pasteurized by the seller, or eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer to prevent food-borne illnesses as recommended by the Food and Drug Administration in its 2005 Food Code, § 3-401.11, as it existed on January 1, 2007; and

(5) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(c)(1) Beginning July 1, 2007, in lieu of the gross receipts or gross proceeds taxes levied on food and food ingredients under §§ 26-52-301 and 26-52-302, there is levied a tax on the gross receipts or gross proceeds derived from the sale of food and food ingredients at the rate of two and seven-eighths percent (2.875%) to be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited into the Educational Adequacy Fund.

(2) The gross receipts or gross proceeds taxes levied under subdivision (c)(1) of this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the

collection, reporting, and payment of all other Arkansas gross receipts taxes.

(d) The gross receipts or gross proceeds derived from the sale of food and food ingredients shall continue to be subject to the:

(1) Excise tax levied under Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county gross receipts taxes.

(e) The Department of Finance and Administration shall promulgate rules to implement the provisions of this section.

History. Acts 2005, No. 647, § 1; 2007, No. 110, § 1.

Amendments. The 2007 amendment substituted “subsection (c) of this section and § 26-53-145” for “§§ 26-52-301, 26-52-302(a), (b), and (d), 26-53-106, and 26-53-107(a), (b), and (d)” in (a)(1)(C)(i); sub-

stituted “subsection (c) of this section” for “§§ 26-52-301 and 26-52-302(a), (b), and (d)” in (a)(2); added (b) and (c); redesignated former (b) and (c) as present (d) and (e); deleted former (b)(1); and redesignated former (b)(2) and (b)(3) as present (d)(1) and (d)(2).

26-52-318. Heavy equipment.

(a) As used in this section, “heavy equipment” means:

- (1) Asphalt pavers;
- (2) Boring machines;
- (3) Bulldozers;
- (4) Cable plows;
- (5) Compaction equipment;
- (6) Concrete pavers;
- (7) Cranes;
- (8) Crawler tractors and loaders;
- (9) Demolition equipment;
- (10) Earth movers;
- (11) Excavators;
- (12) Loader backhoes;
- (13) Motor graders;
- (14) Portable air compressors;
- (15) Rock drills;
- (16) Rough terrain fork lifts;
- (17) Scrapers;
- (18) Skid-steer loaders;
- (19) Trenchers;
- (20) Wheel loaders; or

(21) Any other equipment determined by the Director of the Department of Finance and Administration to be heavy equipment.

(b) The gross receipts tax levied under this chapter on the sale of new or used heavy equipment shall be collected, reported, and remitted by the heavy equipment dealer.

(c) The heavy equipment dealer shall affix a decal to each piece of heavy equipment sold as proof that:

- (1) Sales tax has been paid on the heavy equipment; or
- (2) The heavy equipment is exempt from sales tax.

(d) The director shall develop the decals to be affixed to the heavy equipment.

(e)(1) A heavy equipment dealer who sells used heavy equipment shall remove the old decal from the used heavy equipment before it is resold and a new decal is affixed.

(2) If the heavy equipment dealer fails to remove the old decal the director shall assess the following penalties:

(A) One hundred dollars (\$100) for the first offense;

(B) Two hundred dollars (\$200) for the second offense; and

(C) Five hundred dollars (\$500) for the third and subsequent offenses.

History. Acts 2005, No. 1693, § 1.

26-52-319. Natural gas and electricity used by manufacturers.

(a)(1) Beginning July 1, 2007, in lieu of the gross receipts or gross proceeds tax levied in §§ 26-52-301 and 26-52-302(a)-(d), there is levied an excise tax on the gross receipts or gross proceeds derived from the sale of natural gas and electricity to a manufacturer for use directly in the actual manufacturing process at the rate of four and three-eighths percent (4.375%).

(2) Beginning July 1, 2008, the tax rate levied in subdivision (a)(1) of this section shall be imposed at the rate of three and seven-eighths percent (3.875%).

(3) The taxes levied in this subsection (a) shall be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the tax, interest, penalties, and costs received by the Director of the Department of Finance and Administration shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Educational Adequacy Fund.

(4)(A) The excise tax levied in this section applies only to natural gas and electricity sold for use directly in the actual manufacturing process.

(B) Natural gas and electricity sold for any other purpose shall be subject to the full gross receipts or gross proceeds tax levied under §§ 26-52-301 and 26-52-302(a)-(d).

(5) The excise tax levied in this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(b) As used in this section, "manufacturer" means a manufacturer classified within sectors 31 through 33 of the North American Industry Classification System, as in effect on January 1, 2007.

(c) Natural gas and electricity subject to the reduced tax rate levied in this section shall be separately metered from natural gas and electricity used for any other purpose by the manufacturer or otherwise established in accordance with the rules issued under subsection (e) of this section.

(d) Prior to the sale of natural gas or electricity at the reduced excise tax rate levied in this section, the director may require any seller of natural gas or electricity to obtain a certificate from the consumer, in the form prescribed by the director, certifying that the manufacturer is eligible to purchase natural gas and electricity at the reduced excise tax rate.

(e) The director shall have and be invested with full power and authority to promulgate rules for the proper administration of this section.

(f) The gross receipts or gross proceeds derived from the sale of natural gas and electricity to a manufacturer shall continue to be subject to:

(1) The excise tax levied under the Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county gross receipts taxes.

History. Acts 2007, No. 185, § 1.

A.C.R.C. Notes. Acts 2007, No. 185, § 3, provided: "All existing exemptions from the gross receipts tax levied by the Arkansas Gross Receipts Act or 1941, § 26-52-101 et seq., and the compensating

use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., for natural gas or electricity used in manufacturing or other purposes that are otherwise provided by law shall continue in full force and effect."

26-52-320. Portable toilets and associated services.

(a) The excise tax levied by this chapter and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., is levied on the gross receipts or gross proceeds derived from the following:

(1) The lease or rental of a portable toilet on a long-term or short-term basis; and

(2) Any service associated with the lease or rental of a portable toilet provided by the lessor or otherwise, including without limitation:

- (A) Pumping;
- (B) Recharging with chemicals;
- (C) Disinfecting;
- (D) Cleaning;
- (E) Deodorizing;
- (F) Refilling toilet paper;
- (G) General maintenance or repair;
- (H) Pick-up or delivery; or
- (I) Any other related service.

(b) The gross receipts or gross proceeds derived from the sale of a portable toilet purchased for subsequent rental or lease may be purchased exempt from the gross receipts tax levied by this chapter and the

compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., pursuant to § 26-52-401(12).

(c) The Director of the Department of Finance and Administration may promulgate rules to implement this section.

History. Acts 2007, No. 368, § 1.

26-52-321. Fishing guide services.

(a) The excise tax levied by this chapter and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., is levied on the gross receipts or gross proceeds derived from a fishing guide service provided as a part of a guided fishing trip if the fishing guide service is purchased in conjunction with the sale or lease of taxable tangible personal property by the person providing the fishing guide service, including without limitation:

- (1) A boat or a boat motor;
- (2) Fish bait; or
- (3) Meals.

(b) The Director of the Department of Finance and Administration shall promulgate rules to implement this section.

History. Acts 2007, No. 1011, § 1.

SUBCHAPTER 4 — EXEMPTIONS

SECTION.

- 26-52-401. Various products and services.
- 26-52-402. Certain machinery and equipment.
- 26-52-403. Farm equipment and machinery.
- 26-52-404. Feedstuffs used for livestock.
- 26-52-405. Products used for livestock, poultry, and agricultural production.
- 26-52-406. Prescription drugs and oxygen.
- 26-52-407. Certain vessels.
- 26-52-408. Certain bagging, packaging, or tying materials.
- 26-52-409. Aircraft held for resale and used for rental or charter.
- 26-52-410. Motor vehicles sold to political subdivisions and schools.
- 26-52-411. Admission tickets sold by municipalities and counties.
- 26-52-412. Admission tickets sold by schools, universities, and colleges.
- 26-52-413. Products sold to orphans' or children's homes.

SECTION.

- 26-52-414. Products sold to humane societies.
- 26-52-415. New automobiles sold to blind veterans.
- 26-52-416. Electricity sold to low income households.
- 26-52-417. Motor fuels used in municipal buses.
- 26-52-418. Out-of-state telephones sent to Arkansas for repairs.
- 26-52-419. Insulin and test strips.
- 26-52-420. New motor vehicles purchased by nonprofit organizations or with Urban Mass Transit Administration funds.
- 26-52-421. Nonprofit food distribution agencies.
- 26-52-422. Manufacturing forms.
- 26-52-423. Natural gas used to make glass.
- 26-52-424. Sales to Fort Smith Clearinghouse.
- 26-52-425. Substitute fuel for manufacturing.

SECTION.

- 26-52-426. Railroad rolling stock manufactured for use in interstate commerce.
- 26-52-427. Property purchased for use in performance of construction contract.
- 26-52-428. Railroad parts, cars, and equipment.
- 26-52-429. Gas and energy produced from biomass.
- 26-52-430. Charitable organizations.
- 26-52-431. Timber harvesting equipment.
- 26-52-432. [Repealed.]
- 26-52-433. Durable medical equipment, mobility-enhancing equipment, prosthetic devices, and disposable medical supplies.

SECTION.

- 26-52-434. Fire protection equipment and emergency equipment.
- 26-52-435. Wall and floor tile manufacturers.
- 26-52-436. Certain classes of trucks or trailers.
- 26-52-437. Textbooks and instructional materials for public schools.
- 26-52-438. Chlor-alkali manufacturing process.
- 26-52-439. Livestock reproduction equipment or substances.
- 26-52-440. Exemption for qualified museums.
- 26-52-441. Natural gas and electricity used in the manufacturing of tires.

A.C.R.C. Notes. Acts 1991, No. 548, § 1, provided: "Tangible personal property which becomes a recognizable part of a completed structure or improvement to real property and which is purchased for use or consumption in the performance of construction contracts shall be exempt from any additional Gross Receipts Tax or Compensating (Use) Tax levied by the 78th General Assembly during Regular Session, 1991, when the construction contract for which the property was purchased is entered into prior to the effective date of the Act levying an additional Gross Receipts Tax or Compensating (Use) Tax."

Acts 1991, No. 548, § 2, provided: "For the purposes of this Act 'construction contract' means a contract to construct, manage or supervise the construction, erection, or substantial modification of a building or other improvement or structure affixed to real property. The term 'construction contract' shall not mean contract to produce tangible personal property."

Acts 1991, No. 548, § 3, provided: "The exemption provided by this Act shall apply to tangible personal property purchased prior to January 1, 1997. This exemption shall not apply to cost plus contracts which allow the contractor to pass any additional tax onto the principal as a part of the contractor's costs."

Acts 2007, No. 185, § 3, provided: "All existing exemptions from the gross re-

ceipts tax levied by the Arkansas Gross Receipts Act or 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., for natural gas or electricity used in manufacturing or other purposes that are otherwise provided by law shall continue in full force and effect."

Preambles. Acts 1973, No. 516 contained a preamble which read: "Whereas, the athletic departments of the various institutions of higher learning in the State of Arkansas, both State-supported and private, athletic and/or interscholastic activities of public and private elementary and secondary schools, depend largely if not entirely on funds derived from admissions to athletic events and do not participate in tax revenues; and

"Whereas, it is in the best interest of higher education and public and private elementary and secondary schools and in the overall improvement of interest and participation in athletic events at colleges and universities and public and private elementary and secondary schools throughout the State that sales taxes paid by such institutions of higher learning and public and private elementary and secondary schools on admissions tickets to athletic events be refunded to the particular institution collecting such taxes, or exempted from the provisions of the Gross Receipts Tax"

Acts 1979, No. 449 contained a preamble which read: "Whereas, the levy of sales and use taxes upon towboats, barges and the repair and construction of the same results in an undue hardship on Arkansas purchasers and Arkansas vendors of towboats and barges; and

"Whereas, adjoining states exempt barges and towboats from sales and use taxes resulting in Arkansas vendors and purchasers having a competitive disadvantage; and

"Whereas, this bill would merely put Arkansas towboat and barge vendors and purchasers on an equal footing with competitors in adjoining states; and

"Whereas, the result of this Act would be to boost the economy in this particular industry with the probable result of increased production and sales and increased tax collections resulting from the economic boost to this industry;

"Now, therefore . . ."

Effective Dates. Acts 1947, No. 102, § 2: approved Feb. 19, 1947. Emergency clause provided: "It is found by the Legislature that this act is necessary, in order to protect the finances of the State Hospitals and Sanitariums of the State of Arkansas and this act being necessary for the public peace, health and safety, an emergency is hereby declared to exist, and this act shall become in full force and effect from and after its passage."

Acts 1947, No. 339, § 3: Mar. 28, 1947. Emergency clause provided: "Whereas the school districts are in dire need of additional funds; now, therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1949, No. 15, § 3: Mar. 29, 1949. Emergency clause provided: "Whereas, the production and sale of baby chickens is one of the newest and most important industries within the State of Arkansas; and

"Whereas, it is imperative that this General Assembly assist this new industry in every way possible so that it may be competitive with similar industries of other states; and

"Whereas, the levy of a sales tax made by such industries will be an undue burden and hardship; NOW THEREFORE, an emergency is hereby declared to exist

and this Act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1949, No. 82, § 3: Feb. 14, 1949. Emergency clause provided: "Whereas, there is a great need to remove unjustified burdens from religious and charitable institutions and whereas, institutions which are performing charitable work for orphans should be assisted in their operation wherever possible, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval by the Governor."

Acts 1955, No. 94, § 8: Feb. 22, 1955. Emergency clause provided: "It has been found and is determined by the General Assembly of Arkansas that the Gross Receipts Tax and the Compensating Tax Act as now levied and collected works undue hardships and competition upon the many livestock and poultry growers of this State, and the passage of this Act will eliminate this situation and thereby work to the welfare of the public at large; therefore, it being necessary for the preservation of the public peace, health and safety of the State, an emergency is hereby declared and this act shall be in full force and effect from and after its approval."

Acts 1967, No. 113, § 5: Feb. 20, 1967. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that certain exemptions in the sales tax and use tax to encourage capital investment in industrial, utility and manufacturing enterprises will be of great value to the economic and industrial development of the State; that it is important for such purposes and to correct inequities now existing that exemptions in the sales tax be identical to those of the use tax and that enactment of this bill will accomplish these purposes and aims. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after the date of its approval."

Acts 1968 (1st Ex. Sess.), No. 5, § 5: Feb. 15, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly of this State that

the 'manufacturing and processing' exemptions in certain statutes of this State are confusing and difficult to administer and enforce; that revenues are being lost as a result thereof; that such confusion and loss of revenues have created an emergency, which emergency is hereby found and declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, welfare, and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 49, § 3: Feb. 5, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the municipalities and counties of this State are in desperate need of additional funds to support essential services of local government; that cities and counties are presently required to pay sales and/or use taxes on motor vehicles purchased for use by such cities or counties in performing needed public services; that the repeal of the requirement for paying such taxes on motor vehicles would enable cities and counties to utilize the moneys being spent therefor for other services essential to the public safety, health and welfare; and, that only by the immediate passage of this Act may such financial relief be provided cities and counties. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 600, § 6: Apr. 7, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the maintenance and operation of economical mass transportation for the general public is essential to the public welfare, that the owners and/or operators of motor buses on designated streets according to regular schedules under franchise from municipalities in this State are in dire circumstances thereby jeopardizing the efficient and economical mass transportation of the public, and that the immediate passage of this Act is necessary to provide financial relief to the operation of mass transit facilities in municipalities in this State. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall

be in full force and effect from and after its passage and approval."

Acts 1973, No. 68, § 6: Feb. 6, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the levy of the Arkansas Gross Receipts Tax and the Arkansas Compensating Tax upon agricultural fertilizers, agricultural limestone, agricultural chemicals, and upon vaccines, medication, and medicinal preparations used in treating livestock and poultry, places a severe hardship upon the agricultural industry of this State and that this Act should be given effect immediately in order to remedy this inequitable situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 759, § 3: became law without Governor's signature, Apr. 7, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that cotton is one of the State's most important agricultural products and the sales of cotton and cotton seed are specifically exempt from the Arkansas gross receipts tax; that the ginning of cotton is defined as 'manufacturing' for certain purposes in the gross receipts tax law and packaging materials used by manufacturers to contain manufactured products are normally exempt from the gross receipts tax on the basis that such packaging materials are for resale; that the present Arkansas law is not clear as to whether or not bagging and tie materials used by cotton ginneries in the State are exempt from the gross receipts tax, and that it is in the best interests of the citizens of this State that such materials be specifically exempt from the tax; that this Act is designed to provide such specific exemption and should be given effect immediately. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 760, § 5: Apr. 7, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that uncertainty exists to the intended meanings of the terms 'manufac-

turing' and/or 'processing' as the same are used in Section 4 of the Arkansas Gross Receipts Act, as amended, and Section 6 of the Arkansas Compensating Tax Act, as amended, as a result of which the legislative intent is not being carried out and implemented; that the failure to carry out the legislative intent expressed in the sections amended herein is highly detrimental to the public interest of the State and that this inequitable situation should be corrected immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 922, § 3: Apr. 7, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Boy Scouts of America chartered by the United States Congress in 1916 and the Girl Scouts of the U.S.A. chartered by the United States Congress in 1950 and the various councils, troops and subdivisions thereof are nonprofit organizations dedicated to assist the youth of this country to grow up to properly appreciate and respect the many wonderful opportunities in this free land and to be self-sufficient, responsible, patriotic citizens; that the Boy Scouts of America and the Girl Scouts of the U.S.A. contribute immeasurably to the general well being of the adults as well as the youth in this country by providing the youth opportunities which might not otherwise be available to them and which contribute significantly to their development into highly useful and well rounded adults; that these organizations are nonprofit organizations and that it is in the best interest of all the citizens of this State that such organizations be granted appropriate incentives to continue their outstanding work; and that this Act is designed to provide such incentive by exempting purchases by such organizations from the Arkansas gross receipts tax and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975 (Extended Sess., 1976), No. 1013, § 3: Jan. 23, 1976. Emergency

clause provided: "It is hereby found and determined, and declared, by the General Assembly that the levy of the Arkansas Gross Receipts Tax upon electricity purchased for use in the manufacture by the electrolytic reduction process of aluminum metal imposes a severe hardship on such manufacturing industry in this State, retards expansion of such manufacturing industry, and places it at a competitive disadvantage to like manufacturing industries in other states where such levy does not exist, thereby threatening to cause the relocation of such manufacturing industry to states where such gross receipts tax does not exist, and that the elimination of the Arkansas Gross Receipts Tax upon electricity purchased for use in the manufacture of aluminum metal by the electrolytic reduction process will be of great value to the economic and industrial stability and development of this State, and is essential in reducing unemployment in this State. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 54, § 4: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the effective and efficient administration and application of the exemption provided herein that the exemption be in effect on and after July 1, 1979; that acts of the General Assembly which do not contain an emergency clause take effect ninety days after adjournment of the General Assembly and that an extension of the regular session of 1979 beyond the normal sixty days could delay the effective date of this Act beyond July 1, 1979 and could thereby create serious administrative problems. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect on and after July 1, 1979."

Acts 1979, No. 324, § 18: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly, that the effectiveness of this Act on July 1, 1979 is essential to the operation of the agency established in this Act and that in the

event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1979 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1979."

Acts 1979, No. 417, § 4: Mar. 20, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that humane societies for the prevention of cruelty to animals, organized in compliance with the provisions of Act 44 of 1939 are public organizations necessary to protect the health, safety and general welfare of the citizens of this State and have been recognized by laws of this State for many years as performing and discharging a governmental function and that it is in the public interest that said humane societies enjoy the same exemption from sales tax as is enjoyed by a number of other benevolent nonprofit organizations and that the immediate passage of this Act is necessary to provide for such tax exemption and thereby encourage and promote the operation of such humane societies. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 449, § 3: Mar. 21, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the levy of the Arkansas Sales and Use Taxes on towboats and barges has resulted in an inequitable taxation of Arkansas vendors and purchasers, that surrounding states exempt such items from their sales and use tax, and that the Arkansas vendors and purchasers have thereby been placed in an unfavorable position in the competitive market place, and that this Act is immediately necessary to provide relief from this inequity. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 630, § 3: Mar. 28, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present law, sales to 4-H Clubs and FFA Clubs are subject to the Arkansas Gross Receipts Tax; that this tax creates a hardship on such clubs in Arkansas and it is in the best interest of the 4-H Clubs Program, the FFA Club Program and of the State that such sales be exempted from the Gross Receipts Tax at the earliest possible date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 791, § 6: Mar. 24, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the taxpayers of the State of Arkansas will be burdened in a manner not intended by this General Assembly; therefore, an emergency is therefore declared to exist and, this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its date of passage and approval."

Acts 1983 (1st Ex. Sess.), No. 120, § 4: Jan. 15, 1984. Emergency clause provided: "It is hereby found and determined by the General Assembly that moderate and low income residential electricity customers should be exempt from the State Sales Tax levied on the first five hundred (500) kilowatt of electricity per month, as well as the franchise taxes levied on such sale; that such exemption should become effective on January 15, 1984; that this Act provides such exemption and will not go into effect until after January 15, 1984 unless this emergency clause is adopted. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after January 15, 1984."

Acts 1985, No. 941, § 3: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that prescription drugs sold or used by hospitals should not be subject to the State sales tax; that this Act would grant such exemption and should go into effect as soon as possible; that July 1, 1985, is the proper date for implementing

the provisions of this Act, and that unless this emergency clause is adopted this Act will probably not go into effect on July 1, 1985 because the General Assembly will probably not have adjourned ninety (90) days prior to July 1, 1985. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985."

Acts 1987, No. 7, § 2: Feb. 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the current level of State financial aid to public and elementary and secondary education is inadequate to meet the mandate of Article 14 of the Arkansas Constitution that the State maintain a general, suitable and efficient system of free public schools; that the present level of funding for essential State services will cause the curtailing of activities of necessary State agencies; that additional State revenues are required to alleviate these conditions. Therefore, an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect on and after February 1, 1987."

Acts 1987, No. 350, § 3: Mar. 23, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present definition of farm machinery and equipment which are exempt from the State sales and use tax has been misinterpreted by the Revenue Commissioner; that this Act is immediately necessary to eliminate the confusion resulting from the misinterpretation and until this Act goes into effect, unfair burdens will be placed upon some taxpayers as a result of the misunderstanding. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 416, § 3: Mar. 26, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that prescription drugs sold and administered by oncologists are now subject to the sales and use taxes; that granting an exemption in such circumstances will to a degree reduce the tremendous

financial burden cancer patients must bear for their treatment; that this act provides that degree of assistance and that this act should go into effect immediately in order to help cancer patients as soon as possible. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 986, § 5: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case of *Ricarte v. State*, CR 86-31 [290 Ark. 100, 717 S.W.2d 488 (1986)], a question has arisen over the validity of Act 1013 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 215, § 5: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that formerly such items were exempted from sales tax because such were covered as prescription drugs; that these items are now off the prescription drug list; further that the effectiveness of this act on July 1, 1991, is essential to the operation of all retail drug stores in this state and the Department of Finance and Administration and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1991, could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1991, No. 910, § 2: Aug. 1, 1991.

Acts 1992 (1st Ex. Sess.), Nos. 58 and 61, § 8: July 1, 1993. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that unemployment in Arkansas has reached

emergency proportions, and that this situation can only be remedied by attracting new industry. Offering tax incentives is an effective method of attracting business to Arkansas. This act offers incentives which will reduce unemployment levels. Therefore, an emergency is declared to exist, and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval." Approved Mar. 19, 1992.

Acts 1993, Nos. 820 and 987, § 5: sales tax provisions in full force and effect on July 1, 1993.

Acts 1993, Nos. 820 and 987, § 9: Apr. 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of this state that unemployment and economic underdevelopment has reached intolerable levels in certain portions of this state and the state as a whole has been unable to compete with other state's incentive programs for economic development, and, that the incentives afforded by this Act are critical to the development and expansion of job opportunities in the state. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1001, § 5: emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present law certain Arkansas businesses are put at an unfair advantage against out of state businesses due to the 'forms' used by the business being subjected to the state sales tax; that substantial employment opportunity is jeopardized in the state unless the relief provided by this act is granted immediately; that this act should go into effect as soon as possible in order to protect the employment opportunities within this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1144, § 5: Apr. 14, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that non-profit agencies distributing free food-stuffs contribute immeasur-

ably to the general well being of the poor and needy individuals in this state; that these organizations are non-profit organizations and that it is in the best interest of all the citizens of this State that such organizations be granted appropriate incentives to continue their outstanding work; and that this act is necessary to provide such incentive and allow these organizations to continue their work by exempting purchases by such organizations from the Arkansas gross receipts tax and should be given effect immediately. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 387, § 7: approved Feb. 20, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the application of any additional Gross Receipts or Compensating (Use) Tax levied by the state or any city or county to tangible personal property purchased for the performance of construction contracts entered into prior to the effective date of the tax increase will substantially increase the cost of performing contracts; that contractors are not able to include the additional tax in their contract price at the time the contract is entered into and, therefore, imposition of the tax to purchases of construction contractors would cause undue hardship. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1995, No. 499, § 5: Mar. 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that persons engaged in the business of buying, refurbishing and reselling aircraft are at a competitive disadvantage with other aircraft sellers; that the one year tax-free holding period that currently exists is not an adequate amount of time to refurbish and resell aircraft used in rental or charter services; that there is a need to clarify that gross receipts and short term rental tax are due on aircraft rented during the holding period; and that this act will accomplish those purposes. Therefore, an emergency is hereby de-

clared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 504, § 5: Mar. 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that a commercial vehicle owner operating a truck in interstate commerce could purchase the vehicle and register it under an international registration plan (IRP) in another state and subsequently operate the vehicle in Arkansas without being required to pay Arkansas sales or use tax; that an Arkansas transportation company which leases a vehicle registered under an international registration plan must pay sales tax or the lease payments; that this bill is necessary to clarify that Arkansas sales tax is not due on the lease of IRP registered commercial vehicles operating in Arkansas; and that an immediate effective date is necessary for the fair and efficient administration of taxes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 587, § 5: Mar. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that aboveground farm irrigation pipe is presently exempted from sales taxes but farm irrigation pipe which is to be buried underground is not provided the same exemption; that such different treatment is not the intent of the General Assembly; that this act corrects the inequity; and that this act should go into effect immediately in order to correct the inequity as soon as possible. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 848, § 7: Mar. 31, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the General Assembly has previously passed Act 1237 of 1975 and Act 983 of 1981 to exempt railroad parts, railroad cars and equipment and the repair and maintenance of such railroad parts, railroad cars and equipment from

Arkansas Gross Receipts and Compensating Use Tax; that on January 1, 1987 the Arkansas Department of Finance and Administration issued new regulations which provide that parts, materials and supplies used in such repairs are still subject to tax; that Arkansas law specifically exempts parts and other tangible personal property incorporated into commercial jet aircraft and vessels, barges and towboats from tax; that a substantial number of Arkansans are employed in Arkansas facilities where such repairs are performed; and that these jobs are at risk due to the relocation of such repair facilities to other states which clearly exempt such parts, materials and supplies from tax. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 850, § 8: effective for taxable years beginning Jan. 1, 1995.

Acts 1995, No. 850, § 12: Mar. 31, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious need to provide for the health, welfare and education of the State's children by encouraging child care facilities to offer an 'appropriate early childhood program' and this Act is designed to meet that need by providing tax incentives to encourage construction of these facilities. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1005, § 9: Apr. 7, 1995. Emergency clause provided: "It is hereby found and determined that the Arkansas state highway system is in desperate need of improvement, repair, and expansion; that the county road systems and municipal street systems are in desperate need of improvement, rehabilitation, and repair; that the Arkansas State Highway and Transportation Department is without sufficient funds for state-wide highway improvement projects; that necessary funding may be obtained by the issuance of bonds secured by an increase in fuel excise taxes for such highway projects; that necessary funding may also be ob-

tained by an increase in such fuel excise taxes for county road and municipal street projects; and, that this act is designed to provide the necessary revenues for such highway, road and street projects. Therefore, an emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effective from and after passage and approval."

Acts 1997, No. 603, § 5: Mar. 18, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Salvation Army is an organization which provides assistance to the community and is necessary to protect the health, safety and welfare of the citizens of this State and has been recognized by this State for many years as performing a necessary function to the citizens of this State and that it is in the public interest that the Salvation Army enjoy the same exemption from sales tax as other benevolent non-profit organizations and that the immediate passage of this Act is necessary to provide this tax exemption and thereby encourage and promote the operation of the Salvation Army. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 704, § 5: Mar. 20, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the current tax exemption for prescription drugs does not apply to all physicians and that the application of this law is confusing to the public; that by expanding the exemption the citizens of this state will benefit; and that this act is immediately necessary to aid the citizens of this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of

its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 884, § 5: Mar. 27, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the current tax exemption for prescription drugs does not apply to all physicians and that the application of this law is confusing to the public; that by expanding the exemption the citizens of this state will benefit; and that this act is immediately necessary to aid the citizens of this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1334, § 1, as amended by Acts 2001, No. 622, § 1: July 1, 1999.

Acts 1999, No. 1334, § 5: July 1, 1999. Emergency clause provided: "It is found and determined by the General Assembly that a sales and use tax exemption should be allowed for the sale of equipment and machinery used for the harvesting of timber; that the exemption should be limited to a two-year period in order to study the financial impact of the exemption; and that the exemption should begin on July 1, 1999 so that the next General Assembly will have sufficient data to evaluate the exemption. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999."

Acts 2001, No. 622, § 2: Mar. 8, 2001. Emergency clause provided: "It is found and determined by the General Assembly that the exemption from the Arkansas Gross Receipts Tax and the Arkansas Compensating Tax for purchases of timber

harvesting equipment will expire on June 30, 2001 unless it is extended; that the exemption should be continued; and that this act should become effective immediately in order to keep the exemption from expiring. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1375, § 2: July 1, 2003. Effective date clause provided: "This act shall be effective on and after July 1, 2003."

Acts 2003, No. 551, § 3: May 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there are a substantial number of Arkansas truckers who have registered their trucks in the state of Oklahoma; that their Oklahoma registrations expire on March 31; that this act will encourage those truckers to register their vehicles in the State of Arkansas; that unless this act goes into effect as soon as possible, that incentive will not exist for another year; and that the Department of Finance and Administration needs thirty (30) days lead time to implement this act. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on May 1, 2003."

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1 and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the

Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation

Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also [become] effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2005, No. 2132, § 2: July 1, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Symphony Orchestra Society, Inc. is a nonprofit corporation; that since its founding in 1966, it has made substantial contributions to the musical and cultural life in Arkansas through its concert series, children's concerts, and youth orchestra; that through its partnership program it has provided music education to children in primary, elementary, and middle schools throughout this state; that it is in the public interest that the Arkansas Symphony Orchestra Society, Inc. enjoy the same tax exemption that other benevolent nonprofit organizations enjoy because it performs essential functions to the citizens of this state; that this act is necessary to encourage and promote the operation of the Arkansas Symphony Orchestra Society, Inc.; and that for the effective administration of this act it

should become effective on July 1, 2005. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005."

Acts 2007, No. 87, § 8: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly that due to sharp increases in oil prices, traditional fuel taxation has become a large percentage of the cost of production for Arkansas farmers thereby creating burdensome price increases for Arkansas consumers; that a change in the manner in which tax is paid on dyed diesel fuel is necessary to reduce the cost of production for Arkansas farmers; and that this act is necessary in order to provide tax relief as soon as reasonably possible. Therefore, an emergency is declared to exist and this act being necessary for the preservation of public peace, health, and safety shall become effective on July 1, 2007."

Acts 2007, No. 140, § 5: Oct. 1, 2007. Effective date clause provided: "Sections 1-4 of this act are effective on the first day of the calendar quarter following the effective date of the act."

Acts 2007, No. 181, § 45: Jan. 1, 2008.

Acts 2007, No. 182, § 32: Jan. 1, 2008.

Acts 2007, No. 548, § 2: Jan. 1, 2008.

Acts 2007, No. 860, § 7: Jan. 1, 2008.

RESEARCH REFERENCES

A.L.R. Sales or use tax upon containers or packaging materials purchased by manufacturer or processor for use with goods he distributes. 4 A.L.R.4th 581.

Sales, use, or privilege tax on sales of, or

revenues from, advertising space or services. 40 A.L.R.4th 1114.

Sales and use tax exemption for medical supplies. 30 A.L.R.5th 494.

26-52-401. Various products and services.

There is specifically exempted from the tax imposed by this chapter the following:

(1) The gross receipts or gross proceeds derived from the sale of tangible personal property or services by churches, except when the organizations may be engaged in business for profit;

(2) The gross receipts or gross proceeds derived from the sale of tangible personal property or service by charitable organizations, except when the organizations may be engaged in business for profit;

(3) Gross receipts or gross proceeds derived from the sale of food, food ingredients, or prepared food in public, common, high school, or college cafeterias and lunch rooms operated primarily for teachers and pupils, not operated primarily for the public and not operated for profit;

(4) Gross receipts or gross proceeds derived from the sale of newspapers;

(5) Gross receipts or gross proceeds derived from sales to the United States Government;

(6) Gross receipts or gross proceeds derived from the sale of motor vehicles and adaptive equipment to disabled veterans who have purchased the motor vehicles or adaptive equipment with the financial assistance of the United States Department of Veterans Affairs as provided under 38 U.S.C. § 3901 et seq.;

(7) Gross receipts or gross proceeds derived from the sale of tangible personal property including but not limited to office supplies; office equipment; program items at camp such as bows, arrows, and rope; rifles for rifle range and other rifle items; food, food ingredients, or prepared food for camp; lumber and supplies used in camp maintenance; camp equipment; first aid supplies for camp; the leasing of cars used in promoting scouting; or services to the Boy Scouts of America chartered by the United States Congress in 1916 or the Girl Scouts of the United States of America chartered by the United States Congress in 1950 or any of the scout councils in the State of Arkansas;

(8) Gross receipts or gross proceeds derived from sales of tangible personal property or services to the:

(A) Boys Clubs of America chartered by the United States Congress in 1956 or any local councils or organizations of the Boys Clubs of America; or

(B) Girls Clubs of America or any local councils or organizations of the Girls Clubs of America;

(9) Gross receipts or gross proceeds derived from sales of tangible personal property or services to the Poets' Roundtable of Arkansas;

(10) Gross receipts or gross proceeds derived from sales of tangible personal property or services to 4-H Clubs and FFA Clubs in this state, to the Arkansas 4-H Foundation, the Arkansas Future Farmers of America Foundation, and the Arkansas Future Farmers of America Association;

(11)(A) Gross receipts or gross proceeds derived from the sale of:

(i) Gasoline or motor vehicle fuel on which the motor vehicle fuel or gasoline tax has been paid to the State of Arkansas;

(ii) Special fuel or petroleum products sold for consumption by vessels, barges, and other commercial watercraft and railroads;

(iii) Dyed distillate special fuel on which the tax levied by § 26-56-224 has been paid; and

(iv)(a) Biodiesel fuel.

(b) As used in this subdivision (11)(A)(iv), "biodiesel fuel" means a diesel fuel substitute produced from nonpetroleum renewable resources.

(B) Nothing in this subdivision (11) shall exempt gasoline from the wholesale gross receipts tax imposed pursuant to Acts 1995, No. 1005;

(12)(A) Gross receipts or gross proceeds derived from sales for resale to persons regularly engaged in the business of reselling the articles purchased, whether within or without the state if the sales within the state are made to persons to whom gross receipts tax permits have been issued as provided in § 26-52-202.

(B)(i) Goods, wares, merchandise, and property sold for use in manufacturing, compounding, processing, assembling, or preparing for sale can be classified as having been sold for the purposes of resale or the subject matter of resale only in the event the goods, wares, merchandise, or property becomes a recognizable integral part of the manufactured, compounded, processed, assembled, or prepared products.

(ii) The sales of goods, wares, merchandise, and property not conforming to this requirement are classified for the purpose of this act as being "for consumption or use";

(13) Gross proceeds derived from sales of advertising space in newspapers and publications and billboard advertising services;

(14) Gross receipts or gross proceeds derived from sales of publications sold through regular subscription, regardless of the type or content of the publication or the place printed or published;

(15) Gross receipts or gross proceeds derived from gate admission fees at state, district, county, or township fairs or at any rodeo if the gross receipts or gross proceeds derived from gate admission fees to the rodeo are used exclusively for the improvement, maintenance, and operation of the rodeo and if no part of the net earnings of the state, district, county, or township fair or rodeo inures to the benefit of any private stockholder or individual;

(16) Gross receipts or gross proceeds derived from sales for resale which the state is prohibited by the Constitution and laws of the United States from taxing or further taxing, or which the state is prohibited by the Arkansas Constitution from taxing or further taxing;

(17) Gross receipts or gross proceeds derived from isolated sales not made by an established business;

(18)(A) Gross receipts or gross proceeds derived from the sale of:

(i) Any cotton or seed cotton or lint cotton or baled cotton, whether compressed or not, or cotton seed in its original condition;

(ii) Seed for use in the commercial production of an agricultural product or of seed;

(iii) Raw products from the farm, orchard, or garden, when the sale is made by the producer of the raw products directly to the consumer and user;

(iv) Livestock, poultry, poultry products, and dairy products of producers owning not more than five (5) cows; and

(v) Baby chickens.

(B)(i) An exemption granted by this subdivision (18) shall not apply when the articles are sold at or from an established business, even though sold by the producer of the articles.

(ii) The exemption shall also not apply unless the articles are produced or grown within the State of Arkansas.

(C)(i) However, nothing in subdivision (18)(B) of this section shall be construed to mean that the gross receipts or gross proceeds received by the producer from the sale of the products mentioned in this subdivision (18) shall be taxable when the producer sells commodities produced on his or her farm at an established business located on his or her farm.

(ii) The provisions of this subdivision (18) are intended to exempt the sale by livestock producers of livestock sold at special livestock sales.

(iii) The provisions of this subdivision (18) shall not be construed to exempt sales of dairy products by any other businesses.

(iv) The provisions of this subdivision (18) shall not be construed to exempt sales by florists and nurserymen. As used in this subdivision (18), "nurserymen" does not include Christmas tree farmers;

(19) Gross receipts or gross proceeds derived from the sale of food, food ingredients, or prepared food to governmental agencies for free distribution to any public, penal, and eleemosynary institutions or for free distribution to the poor and needy;

(20)(A) Gross receipts or gross proceeds derived from the rental or sale of medical equipment, for the benefit of persons enrolled in and eligible for Medicare or Medicaid programs as contained in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395 et seq. and 1396 et seq., respectively, or successor programs or any other present or future United States Government subsidized health care program, by medical equipment suppliers doing business in the State of Arkansas.

(B) However, this exemption applies only to receipts or proceeds received directly or indirectly through an organization administering such program in the State of Arkansas pursuant to a contract with the United States Government in accordance with the terms thereof;

(21)(A) Gross receipts or gross proceeds derived from the sale of any tangible personal property or services as specifically provided in this subdivision (21) to any hospital or sanitarium operated for charitable and nonprofit purposes or any nonprofit organization whose sole purpose is to provide temporary housing to the family members of patients in a hospital or sanitarium.

(B) However, gross proceeds and gross receipts derived from the sale of materials used in the original construction or repair or further extension of the hospital or sanitarium or temporary housing facilities, except state-owned tax-supported hospitals and sanitariums, shall not be exempt from this chapter;

(22) Gross receipts or gross proceeds derived from the sale of used tangible personal property when the used property was:

(A) Traded in and accepted by the seller as part of the sale of other tangible personal property; and

(B)(i) The state gross receipts tax was collected and paid on the total amount of consideration for the sale of the other tangible personal property without any deduction or credit for the value of the used tangible personal property.

(ii) The condition that the state gross receipts tax was collected and paid on the total amount of consideration is not required for entitlement to this exemption when the sale of the other tangible personal property was otherwise exempt under other provisions of this chapter.

(iii) This subdivision (22) does not apply to transactions involving used automobiles provided for in § 26-52-510(b), used mobile homes provided for in § 26-52-504 [repealed], or used aircraft provided for in § 26-52-505;

(23) Gross receipts or gross proceeds derived from the sale of unprocessed crude oil;

(24) The gross receipts or gross proceeds derived from the sale of electricity used in the manufacture of aluminum metal by the electrolytic reduction process;

(25) The gross receipts or gross proceeds derived from the sale of articles sold on the premises of the Arkansas State Veterans Home;

(26) That portion of the gross receipts or gross proceeds derived from the sale of automobile parts which constitute core charges which are received for the purpose of securing a trade-in for the article purchased, except that when the article is not traded in, then the tax is due on the core charge;

(27)(A) Gross receipts and gross proceeds derived from the sale of:

(i) Tangible personal property lawfully purchased with food stamps or food coupons issued in accordance with the Food Stamp Act of 1964, 7 U.S.C. § 2011 et seq.;

(ii) Tangible personal property lawfully purchased with food instruments or vouchers issued under the Special Supplemental Nutrition Program for Women, Infants, and Children in accordance with Section 17 of the Child Nutrition Act of 1966, 42 U.S.C § 1786, as amended; and

(iii) Food or food ingredients purchased through bids under the Special Supplemental Nutrition Program for Women, Infants, and Children.

(B) If consideration other than food stamps, food coupons, food instruments, or vouchers is used in any sale, that portion of the sale shall be fully taxable.

(C) The tax exemption provided by this subdivision (27) shall expire if the exemption becomes no longer required for full participation in the food stamp program and the Special Supplemental Nutrition Program for Women, Infants, and Children;

(28)(A) Parts or other tangible personal property incorporated into or which become a part of commercial jet aircraft components, or commercial jet aircraft subcomponents.

(B) As used in this subdivision (28) "commercial jet aircraft" means any commercial, military, private, or other turbine or turbo jet aircraft having a certified maximum take-off weight of more than twelve thousand five hundred pounds (12,500 lbs.);

(29) Gross receipts or gross proceeds derived from the sale of any tangible personal property specifically exempted from taxation by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq;

(30)(A) The gross receipts proceeds charged to a consumer or user for the transfer of fill material by a business engaged in transporting or delivering fill material, provided:

(i) Such fill material was obtained free of charge by a business engaged in transporting or delivering fill material; and

(ii) The charge to the consumer or user is only for delivery.

(B) Any business claiming the exemption under subdivision (30)(A) of this section shall keep suitable records necessary to determine that fill material was obtained without charge;

(31) Gross receipts or gross proceeds derived from sales of tangible personal property or services to Habitat for Humanity;

(32) Gross receipts or gross proceeds derived from the long-term lease, thirty (30) days or more, of commercial trucks used for interstate transportation of goods if the trucks are registered under an international registration plan similar to § 27-14-501 et seq. and administered by another state which offers reciprocal privileges for vehicles registered under § 27-14-501 et seq.;

(33) Gross receipts or gross proceeds derived from sales of tangible personal property or services to The Salvation Army;

(34) Gross receipts or gross proceeds derived from sales of tangible personal property and services to Heifer Project International, Inc.;

(35)(A) Gross receipts or gross proceeds derived from the sale of catalysts, chemicals, reagents, and solutions which are consumed or used:

(i) In producing, manufacturing, fabricating, processing, or finishing articles of commerce at manufacturing or processing plants or facilities in the State of Arkansas; and

(ii) By manufacturing or processing plants or facilities in the state to prevent or reduce air or water pollution or contamination which might otherwise result from the operation of the plant or facility.

(B) As used in this subdivision (35), "manufacturing" and "processing" mean the same as set forth in § 26-52-402(b);

(36) Gross receipts or gross proceeds derived from the sale of:

(A) Fuel packaging materials to a person engaged in the business of processing hazardous and non-hazardous waste materials into fuel products at a facility permitted by the Arkansas Department of Environmental Quality for hazardous waste treatment; and

(B) Machinery and equipment, including analytical equipment and chemicals used directly in processing and packaging of hazardous and non-hazardous waste materials into fuel products at a facility permitted by the Arkansas Department of Environmental Quality for hazardous waste treatment;

(37) Gross receipts or gross proceeds derived from sales of tangible personal property or services to the Arkansas Symphony Orchestra Society, Inc.; and

(38) Gross receipts or gross proceeds from the sale of any good, ware, merchandise, or tangible personal property withdrawn or used from an established business or from the stock in trade of the established reserves for consumption or use in an established business or by any other person if the good, ware, merchandise, or tangible personal property withdrawn or used is donated to a National Guard member, emergency service worker, or volunteer providing services to a county which has been declared a disaster area by the Governor.

History. Acts 1941, No. 386, § 4; 1947, No. 102, § 1; 1949, No. 15, § 1; 1949, No. 152, § 1; 1961, No. 213, § 1; 1965, No. 133, § 1; 1967, No. 113, § 1; 1968 (1st Ex. Sess.), No. 5, § 1; 1973, No. 403, § 1; 1975, No. 922, § 1; 1975, No. 927, § 1; 1975 (Extended Sess., 1976), No. 1013, § 1; 1977, No. 252, § 1; 1977, No. 382, § 1; 1979, No. 324, § 16; 1979, No. 630, § 1; 1981, No. 706, § 1; 1985, No. 518, § 1; A.S.A. 1947, § 84-1904; Acts 1987, No. 7, § 1; 1987, No. 986, §§ 1-3; 1987, No. 1033, §§ 11, 12; 1989, No. 753, § 1; 1991, No. 458, § 2; 1992 (1st Ex. Sess.), No. 58, § 3; 1992 (1st Ex. Sess.), No. 61, § 3; 1993, No. 617, §§ 1, 2; 1993, No. 820, § 1; 1993, No. 987, § 1; 1993, No. 1183, § 1; 1995, No. 504, § 1; 1995, No. 516, § 1; 1995, No. 850, § 2; 1995, No. 1005, § 2; 1997, No. 603, § 1; 1997, No. 1222, § 1; 1999, No. 854, § 1; 2001, No. 1683, § 1; 2005, No. 2132, § 1; 2007, No. 87, § 1; 2007, No. 181, §§ 15-19; 2007, No. 860, § 3.

A.C.R.C. Notes. Former subsection (t) of this section, now subdivision (24), was reenacted by Acts 1987, No. 986, § 1. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Acts 1968 (1st Ex. Sess.), No. 5, § 3, provided, in part, that the amendment of former subsection (r) of this section (now subdivision 23) and § 26-52-402(a)(1), (a)(2)(A), (a)(3), and (b) and (c) in part, shall not be construed so as to narrow the scope of the specific exemptions set out under Acts 1941, No. 386.

Section 26-52-504 referred to in subdivision (22)(B)(iii) of this section was re-

pealed by Acts 2005, No. 2254, § 2. For current law, see § 26-52-801 et seq.

Publisher's Notes. Acts 1937, No. 189, § 1, exempted the sale of any cotton, or seed cotton, or lint cotton, or bale cotton, whether compressed or not, or cotton seed in its original condition from any retail sales tax.

Acts 1949, No. 15, § 2, provided that it was the intention of the act to exempt the sale of baby chickens from the provisions of Acts 1941, No. 386.

Acts 1991, No. 458, § 1, provided: "It is found and determined by the General Assembly that Arkansas law provides an exemption from the Arkansas Gross Receipts Tax for the gross receipts or gross proceeds derived from the sale of raw products from farms, orchards and gardens, where the sale is made by the producer of the raw products directly to the consumer and user; that this exemption was always intended to include the sale of Christmas trees; that there has been confusion over this exemption because the Christmas tree farmers were erroneously classified by regulations as nurserymen; that a recent chancery court decision declared Christmas tree farmers to be entitled to the exemption; and that the purpose of this act is to clarify the law by stating that Christmas tree farmers are not nurserymen."

Acts 1995, No. 516 became law without the Governor's signature.

Sections 1—5 of Act 1005 of 1995 referred to in this section are set out in a note under chapter 57 of this title.

Amendments. The 2005 amendment added present (37) and made related changes.

The 2007 amendment by No. 87 added (11)(A)(iii) and (iv) and made related changes.

The 2007 amendment by No. 181 inserted "or food ingredients" in (3) and (27)(A)(iii); inserted "or food ingredients or prepared food" in (7); substituted "food or food ingredients or prepared food" for "foodstuffs" in (19); and added (38):

The 2007 amendment by No. 860 inserted "or prepared food" in (3).

Cross References. Wholesale motor fuel excise tax, § 26-57-1101 et seq.

Effective Dates. Acts 1985, No. 518, § 3 provided that the act was effective for tax years on and after July 1, 1985.

Acts 1987, No. 986, § 3, and Acts 1987, No. 1033, § 12, provided, in part, that the provisions of present subdivision (27) of

this section shall be effective beginning October 1, 1987.

Acts 1992 (1st Ex. Sess.), Nos. 58 and 61, § 4, provided:

"The provisions contained in Section 2 and Section 3 of this act shall be effective on and after July 1, 1993."

Acts 1993, Nos. 820 and 987, § 5 provided:

"The sales tax provisions of this act shall be in full force and effect on July 1, 1993."

Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

Acts 2007, No. 860, § 7, provided: "Section 1-6 of this act will become effective on January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

CASE NOTES

ANALYSIS

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Constitutionality.

A state sales tax scheme that taxes general interest magazines, but exempts newspapers and religious, professional,

trade, and sports journals, violates the First Amendment's guarantee of freedom of the press. *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 107 S. Ct. 1722, 95 L. Ed. 2d 209 (1987).

Exemptions under subdivisions (7)-(10) of this section for purchases made by certain organizations were not violations of equal protection and due process clauses of the United States and Arkansas Constitutions as applied to the sales made by a nonprofit charitable organization. *Tony & Susan Alamo Found., Inc. v. Ragland*, 295 Ark. 12, 746 S.W.2d 45 (1988), cert. denied, 488 U.S. 852, 109 S. Ct. 137, 102 L. Ed. 2d 109 (1988).

Construction.

Tax exemptions must be strictly construed against exemption, and to doubt is to deny the exemption. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

Agriculture.

Acts 1935, No. 233, exempting all foods necessary to life, naming butter fats, exempted whole milk since whole milk was the only product that contained "butter fats" in commercial quantities. *Wiseman v. Affolter*, 192 Ark. 509, 92 S.W.2d 388 (1936) (decision under prior law).

Subdivision (18) of this section does not contain an unreasonable or arbitrary clas-

sification because, even though business of florist and nurseryman are subdivisions of agriculture, they can be distinguished from that of farmer. *Hardin v. Vestal*, 204 Ark. 492, 162 S.W.2d 923 (1942).

Nest pads, feeder lids, filter flats, litter, vaccine and medication, and spray used in the production of poultry held not recognizable, integral parts of the finished product and are not exempt from sales tax. *Hervey v. Tyson's Foods, Inc.*, 252 Ark. 703, 480 S.W.2d 592 (1972).

Taxpayer who grew grass sod and sold it directly to consumers was a nurseryman and, thus, not entitled to the raw farm products exemption of subdivision (18) of this section. *Pledger v. Boyd*, 304 Ark. 91, 799 S.W.2d 807 (1990).

The exemption for the sale of raw farm products does not apply to the sale of bermuda sod to be used as fairways and lawns. *Pledger v. Boyd*, 304 Ark. 91, 799 S.W.2d 807 (1990).

Amusements.

Tax assessed against owners of coin operated amusement games was not such a privilege or license tax as was referred to in Acts 1937, No. 154, § 15(b), as amended by Acts 1939, No. 364, and could not be deducted from the sales tax. *Bangs v. McCarroll*, 202 Ark. 103, 149 S.W.2d 53 (1941) (decision under prior law).

Billboards.

Painted bulletins, posters, facings, hardware, and paint, purchased out of state and used in connection with the taxpayer's billboard advertising service, were not exempt from the use tax. *Technical Servs. of Ark., Inc. v. Pledger*, 320 Ark. 333, 896 S.W.2d 433 (1995).

The term "services," as contemplated by the legislature in enacting the exemption in subdivision (13) of this section, does not mean "business." *Technical Servs. of Ark., Inc. v. Pledger*, 320 Ark. 333, 896 S.W.2d 433 (1995).

Burden of Proof.

The party claiming an exemption from taxes has the burden of proving his entitlement beyond a reasonable doubt. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

Charitable Organizations.

Sales by businesses operated for profit and owned by charitable organizations

are not exempt from sales tax under subdivision (2) of this section. *Tony & Susan Alamo Found., Inc. v. Ragland*, 295 Ark. 12, 746 S.W.2d 45 (1988), cert. denied, 488 U.S. 852, 109 S. Ct. 137, 102 L. Ed. 2d 109 (1988).

Discrimination.

Acts 1935, No. 233, § 15, and Acts 1937, No. 154, § 15, which allowed a credit of severance tax against sales tax, did not create discrimination against foreign commerce. *Southern Kraft Corp. v. Hardin*, 205 Ark. 512, 169 S.W.2d 637 (1943) (decision under prior law).

Sales of natural gas produced in another state and transported into Arkansas by pipe line to industrial customer were not transactions in interstate commerce so as to be exempt from sales tax. *Arkansas-Louisiana Gas Co. v. Hardin*, 206 Ark. 593, 176 S.W.2d 903 (1944) (decision under prior law).

—Exemption Not Found.

Packaging materials purchased out-of-state by a taxpayer in connection with its business of hazardous waste disposal were not purchased for resale as part of a finished product, notwithstanding that packaged fuel sold by the taxpayer was burned in cement kilns and power plants and that the packaging materials were consumed as part of the fuel, as the taxpayer actually paid the cement kilns and power plants to take the packaged waste and burn it and those entities never paid the taxpayer for packaged fuel during the audit period. *Rineco Chem. Indus., Inc. v. Weiss*, 344 Ark. 118, 40 S.W.3d 257 (2001).

Hospitals.

The exemption of the sale of materials used in the construction or repair of state-owned, tax-supported hospitals and sanitariums applies only to sales made directly to such hospitals and sanitariums. *John B. May Co. v. McCastlain*, 244 Ark. 495, 426 S.W.2d 158 (1968).

Contractor installing equipment and performing other construction work at state medical center was not the agent of the medical center in the purchase of the materials and equipment used in fulfilling contract, but the consumer thereof and liable for the gross receipts tax thereon. *John B. May Co. v. McCastlain*, 244 Ark. 495, 426 S.W.2d 158 (1968).

Interstate Commerce.

Transaction through which Arkansas corporation ordered from distributors or manufacturers in other states merchandise not carried in stock, with directions that shipments be made to its customers, and nonresident manufacturer charged the amount involved to the corporation, which, in turn, billed its customers within the state, was not in interstate commerce and was subject to sales tax. *Hollis & Co. v. McCarroll*, 200 Ark. 523, 140 S.W.2d 420 (1940) (decision under prior law).

Gas and electricity brought from another state were taxable when sales lost characteristics of interstate commerce. *Southern Kraft Corp. v. Hardin*, 205 Ark. 512, 169 S.W.2d 637 (1943) (decision under prior law).

Judicial Review.

The standard of review for tax exemption cases is trial de novo on the record, and appellate court will not reverse the chancellor's findings of fact unless they are clearly erroneous. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

Motor Vehicles.

The isolated-sale exemption in subdivision (17) of this section does not apply to the sale of used vehicles by sellers who are not regularly engaged in the business of selling vehicles; the clear intent of the General Assembly since 1959 has been that the private sale of used motor vehicles be subject to the sales tax and that the general-isolated sales exemption has no application to such sales. *Pledger v. Mid-State Constr. & Materials, Inc.*, 325 Ark. 388, 925 S.W.2d 412 (1996).

Natural Gas.

Subdivision (12)(B) of this section does not provide a "sale for resale" exemption from the sales and use tax for natural gas used to manufacture glass. *Arkansas Glass Container Corp. v. Pledger*, 320 Ark. 10, 894 S.W.2d 599 (1995).

Newspapers.

Preprinted advertising supplements are not a component part of the newspapers in which they appear and are not exempt from use tax as newspapers under subdivision (4) of this section. *Ragland v. K-Mart Corp.*, 274 Ark. 297, 624 S.W.2d 430 (1981).

Public Agencies.

State Highway Commission was not exempt from tax on commodities bought by the highway department. *Arkansas State Hwy. Comm'n v. Wiseman*, 192 Ark. 873, 95 S.W.2d 557 (1936) (decision under prior law).

Public Utilities.

Former § 77-1130 (prior to 1969 amendment) exempting rural electric cooperative corporations from excise taxes did not exempt them from duty of collecting the sales tax under Acts 1937, No. 154 from their individual members to whom they distributed electricity, making a charge therefor, and who as consumers were subject to the sales tax. *McCarroll v. Ozark Rural Elec. Coop. Corp.*, 201 Ark. 329, 146 S.W.2d 693 (1940) (decision under prior law).

Sales for Resale.**—Advertising Space.**

Where items were not exempt under subdivision (13) of this section, taxpayer was required to hold a retail sales permit in order to claim the sale for resale exemption under subdivision (12) of this section. *Technical Servs. of Ark., Inc. v. Pledger*, 320 Ark. 333, 896 S.W.2d 433 (1995).

—Constitutionally Prohibited Taxes.

Where imposition of sales tax was not constitutionally impermissible, defendant was not entitled to an exemption under subdivision (16) of this section. *Pledger v. Arkla, Inc.*, 309 Ark. 10, 827 S.W.2d 126 (1992), cert. denied, 506 U.S. 870, 113 S. Ct. 203, 121 L. Ed. 2d 144 (1992).

—Construction.

General Assembly intended to impose the tax on materials, such as gravel to be used in the construction of a temporary road to an oil-extraction project, at the time of the sale between the supplier and the contractor, but the materials cannot again be taxed when the contractor bills his customers for constructing the roads on the sites. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

—Consumption or Use.

Sales by wholesaler to retailer of wrapping, paper bags and twine used by merchants for wrapping merchandise sold were "sales for consumption and use" and not "sales for resale" and therefore subject

to the sales tax from the wholesaler within Acts 1935, No. 233. *Wiseman v. Arkansas Whsle. Grocers' Ass'n*, 192 Ark. 313, 90 S.W.2d 987 (1936) (decision under prior law).

Sales to retail merchants of paper boxes, paper bags, twine, wrapping paper, and other material to be used by the merchants for the purpose of delivering merchandise sold by them to their customers, where no specific charge is made by the merchants to the customers for these commodities, except that in some instances they might be weighed along with the articles sold, are not sales for resale purposes and not exempt from tax imposed by this section. *Dermott Grocery & Comm'n Co. v. Hardin*, 203 Ark. 446, 156 S.W.2d 882 (1941).

Where most wooden cases were returned to soft drink seller, the cases were for the seller's own consumption or use, not a sale for resale, and cases were not exempt from use tax. *Hervey v. Southern Wooden Box, Inc.*, 253 Ark. 290, 486 S.W.2d 65 (1972).

Paper plates, paper and plastic straws and stirrers, plastic tableware and utensils, paper napkins, sacks, and premoistened towelettes used in the short order restaurant business are subject to tax, as these items are used for consumption in the course of the restaurant business and not resold as a part of the price of the finished food. *Heath v. Little Rock Paper Co.*, 257 Ark. 715, 520 S.W.2d 196 (1975).

—Exemption Found.

Purchase of disposable paper cups by vending machine beverage company from manufacturer held to be exempt from use tax as a purchase for resale. *Hervey v. Southern Wooden Box, Inc.*, 253 Ark. 290, 486 S.W.2d 65 (1972).

Where a bottled water seller sold only to distributors, not directly to consumers, and its contracts with the distributors provided that it would sell bottles to the distributors at cost, the transactions fell within the sales tax exemption of sales for resale, which is carried forward into the use tax law. *Ragland v. Mountain Valley Spring Co.*, 287 Ark. 4, 696 S.W.2d 710 (1985).

—Legislative Intent.

While this section was designed to prevent the same property from being sub-

jected twice to the same tax, there was a correlative legislative intent that all property be subjected to the tax at some point in the course of its manufacture and sale to the ultimate consumer, as indicated by the sale for resale requirement that, for the initial sale to be exempt, the resale must be to a person having a sales tax permit. *Hervey v. Southern Wooden Box, Inc.*, 253 Ark. 290, 486 S.W.2d 65 (1972).

—Manufacturing.

Traces of sulfur, defoaming agent, acetic acid, and soap chips found in finished manufactured paper product, use of which was merely incidental, economically impractical to remove, and did not improve the finished product, were not exempt from sales or use tax upon sales for resale. *Hervey v. International Paper Co.*, 252 Ark. 913, 483 S.W.2d 199 (1972).

Where chlorine is used in manufacture of bromine, the chlorine does not become a part of the bromine, but quite the opposite, the chlorine takes something from the bromine, becomes chloride, and is discarded as worthless; thus it is at best consumed in the manufacturing process, not resold to the purchaser as tangible property, and is subject to the use tax. *Great Lakes Chem. Corp. v. Wooten*, 266 Ark. 511, 587 S.W.2d 220 (1979).

Under subdivisions (12)(A) and (B) of this section, there is no exemption from paying use tax on purchases of hexane and tuluo where the two chemicals do not become recognizable integral parts of manufactured tennis balls and rubber moldings. *Ragland v. General Tire & Rubber Co.*, 297 Ark. 394, 763 S.W.2d 70 (1989).

Items, such as molds or dies, that are destroyed or disposed of in the manufacturing process, do not qualify for the exemption in subdivision (12)(B) of this section because, if they are destroyed, there is no possibility of double taxation. *Pledger v. C.B. Form Co.*, 316 Ark. 22, 871 S.W.2d 333 (1994).

—Recognizable Integral Part.

Paper and styrofoam cups and their lids, paper bowls, wrappers, and boxes used as containers for food by short order restaurants are exempt as these items are not consumed by the restaurant, but are a component of the product sold, their price becoming a component of the food sold to

the final customer. *Heath v. Little Rock Paper Co.*, 257 Ark. 715, 520 S.W.2d 196 (1975).

The word "integral" in subdivision (12)(B) of this section means necessary to the completeness of the final manufactured product. *Arkansas Glass Container Corp. v. Pledger*, 320 Ark. 10, 894 S.W.2d 599 (1995).

Where natural gas was used in the process of making glass, but most of the natural gas used in the process was used for heating the furnace, the natural gas did not become a recognizable and integral part of the product. *Arkansas Glass Container Corp. v. Pledger*, 320 Ark. 10, 894 S.W.2d 599 (1995).

Trace amounts of a compound or ingredient found in the finished product do not establish that the compound or ingredient was purchased for resale. *Arkansas Glass Container Corp. v. Pledger*, 320 Ark. 10, 894 S.W.2d 599 (1995).

Cited: *Frank Lyon Co. v. United States*, 435 U.S. 561, 98 S. Ct. 1291, 55 L. Ed. 2d 550 (1978); *Southern Steel & Wire Co. v. Wooten*, 276 Ark. 37, 631 S.W.2d 835 (1982); *State, Dep't of Fin. & Admin. v. Tedder*, 326 Ark. 495, 932 S.W.2d 755 (1996); *Weiss v. Central Flying Serv., Inc.*, 326 Ark. 685, 934 S.W.2d 211 (1996); *Ghegan & Ghegan, Inc. v. Barclay*, 345 Ark. 514, 49 S.W.3d 652 (2001).

26-52-402. Certain machinery and equipment.

(a) There is specifically exempted from the tax imposed by this chapter the following:

(1)(A) Gross receipts or gross proceeds derived from the sale of tangible personal property consisting of machinery and equipment used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in the State of Arkansas, including facilities and plants for manufacturing of feed, processing of poultry or eggs, or both, and livestock, and the hatching of poultry, but only to the extent that the machinery and equipment is purchased and used for the purposes set forth in this subdivision (a)(1).

(B) The machinery and equipment will be exempt under this subdivision (a)(1) if it is purchased and used to create new manufacturing or processing plants or facilities within this state or to expand existing manufacturing or processing plants or facilities within this state;

(2)(A) Machinery purchased to replace existing machinery and used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in this state will be exempt under this subdivision (a)(2).

(B)(i) As used in subdivision (a)(2)(A) of this section, "machinery purchased to replace existing machinery" means that substantially all of the machinery and equipment required to perform an essential function is physically replaced with new machinery.

(ii) As used in subdivision (a)(2)(B)(i) of this section, "substantially" is intended to exclude routine repairs and maintenance and partial replacements that do not improve efficiency or extend the useful life of the entire machine, but it is not intended to mean that foundations and minor components that can be economically adapted, rebuilt, or refurbished must be completely replaced when replacement would be more expensive or impracticable than adapt-

ing, rebuilding, or refurbishing the old foundation or minor components.

(C) It is the intent of this subdivision (a)(2) to provide the exemptions in subdivision (a)(1) of this section and this subdivision (a)(2) as incentives to encourage the location of new manufacturing plants in Arkansas, the expansion of existing manufacturing plants in Arkansas, and the modernization of existing manufacturing plants in Arkansas through the replacement of old, inefficient, or technologically obsolete machinery and equipment;

(3) Gross receipts or gross proceeds derived from the sale of tangible personal property consisting of machinery and equipment required by state law or regulations to be installed and utilized by manufacturing and processing plants or facilities in this state to prevent or reduce air or water pollution or contamination which might otherwise result from the operation of the plant or facility; and

(4) Gross receipts and gross proceeds derived from the rental or lease of specialized equipment used in the filming of a motion picture which qualifies for the tax incentives provided by the Motion Picture Incentive Act of 1983, § 26-4-201 et seq. [expired].

(b) As used in this section, "manufacturing" or "processing" refer to and include those operations commonly understood within their ordinary meaning and shall also include:

- (1) Mining;
- (2) Quarrying;
- (3) Refining;
- (4) Extracting oil and gas;
- (5) Cotton ginning;
- (6) Drying of rice, soybeans, and other grains;
- (7) Manufacturing of feed;
- (8) Processing of poultry or eggs and livestock and the hatching of poultry;
- (9) Printing of all kinds, types, and characters, including the services of overprinting and photographic processing incidental to printing;
- (10) Processing of scrap metal into grades and bales for further processing into steel and other metals;
- (11) Retreading of tires for automobiles, trucks, and other mobile equipment powered by electrical or internal combustion engines or motors;
- (12) Rebuilding or remanufacturing of used parts for automobiles, trucks, and other mobile equipment powered by electrical or internal combustion engines or motors if the rebuilt or remanufactured parts are not sold directly to the consumer but are sold for resale; and
- (13) Producing of protective coatings which increase the quality and durability of a finished product.

(c)(1)(A) It is the intent of this section to exempt only such machinery and equipment as shall be used directly in the actual manufacturing or processing operation at any time from the initial stage when actual manufacturing or processing begins through the completion of the

finished article of commerce and the packaging of the finished end product.

(B) As used in this subsection, "directly" is used to limit the exemption to only the machinery and equipment used in actual production during processing, fabricating, or assembling raw materials or semifinished materials into the form in which such personal property is to be sold in the commercial market.

(2) For purposes of this subsection, the following definitions, specific inclusions, and specific exclusions shall apply and represent the intent of the General Assembly as to its interpretation of the term "used directly":

(A)(i) Machinery and equipment used in actual production includes machinery and equipment that meet all other applicable requirements and which cause a recognizable and measurable mechanical, chemical, electrical, or electronic action to take place as a necessary and integral part of manufacturing, the absence of which would cause the manufacturing operation to cease.

(ii) "Directly" does not mean that the machinery and equipment must come into direct physical contact with any of the materials that become necessary and integral parts of the finished product.

(iii) Machinery and equipment which handle raw, semifinished, or finished materials or property before the manufacturing process begins are not used directly in the manufacturing process.

(iv) Machinery and equipment which are necessary for purposes of storing the finished product are not used directly in the manufacturing process.

(v) Machinery and equipment used to transport or handle a product while manufacturing is taking place are used directly;

(B) Machinery and equipment "used directly" in the manufacturing process shall include, but shall not be limited to, the following:

(i) Molds and dies that determine the physical characteristics of the finished product or its packaging material;

(ii) Testing equipment to measure the quality of the finished product;

(iii) Computers and related peripheral equipment that directly control or measure the manufacturing process;

(iv) Machinery and equipment that produce steam, electricity, or chemical catalysts and solutions that are essential to the manufacturing process but which are consumed during the course of the manufacturing process and do not become necessary and integral parts of the finished product;

(C) Machinery and equipment "used directly" in the manufacturing process shall not include the following:

(i) Hand tools;

(ii) Machinery, equipment, and tools used in maintaining and repairing any type of machinery and equipment;

(iii) Transportation equipment, including conveyors, used solely before or after the manufacturing process has been started or completed;

(iv) Office machines and equipment including computers and related peripheral equipment not directly used in controlling or measuring the manufacturing process;

(v) Buildings;

(vi) Machinery and equipment used in administrative, accounting, sales, or other such activities of the business;

(vii) All furniture;

(viii) All other machinery and equipment not used directly in manufacturing or processing operations as defined in this section; and

(ix) Machinery and equipment used by a manufacturer to produce or repair replacement dies, molds, repair parts, or replacement parts used or consumed in the manufacturer's own manufacturing process.

(d) The Director of the Department of Finance and Administration may promulgate rules and regulations for the orderly and efficient administration of this section.

History. Acts 1941, No. 386, § 4; 1967, No. 113, § 1; 1968 (1st Ex. Sess.), No. 5, § 1; 1975, No. 760, § 1; 1983, No. 791, § 1; 1983, No. 870, §§ 1, 3; 1985, No. 492, § 1; 1985, No. 543, § 1; 1985, No. 841, § 1; A.S.A. 1947, §§ 84-1904, 84-1904n; Acts 1993, No. 1250, § 1; 1997, No. 1233, § 1; 1999, No. 854, § 2; 1999, No. 1110, § 1.

A.C.R.C. Notes. Acts 1968 (1st Ex. Sess.), No. 5, § 3, provided, in part, that the amendment of former subsection (r) of Acts 1941, No. 386, now § 26-52-401(23) and § 26-52-402(a)(1), (a)(2)(A), (a)(3), and (b) and (c) in part, shall not be construed so as to narrow the scope of the specific exemptions set out under Acts 1941, No. 386.

The tax incentive for filming a motion picture, found at § 26-4-201 et seq., which is cited in (a)(4) has expired. The new "Motion Picture Incentive Act of 1997" is codified as § 15-4-2001 et seq.

Publisher's Notes. Acts 1983, No. 791, § 3, provided that the provisions of this act shall apply for all gross receipts tax returns and compensating tax returns for the periods beginning on or after the effective date of this act.

Acts 1983, No. 870, § 4, provided that the provisions of this act shall apply for all gross receipts tax returns and compensating tax returns for the periods beginning on or after January 1, 1985.

CASE NOTES

ANALYSIS

Construction.

Burden of Proof.

Judicial Review.

Machinery and Equipment.

Manufacturing.

Molds and Dies.

Pollution Control.

Used Directly.

Construction.

Tax exemptions must be strictly construed against exemption, and to doubt is to deny the exemption. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

A tax-exemption provision must be strictly construed against the exemption. *ALCOA v. Weiss*, 329 Ark. 225, 946 S.W.2d 695 (1997).

Burden of Proof.

The party claiming an exemption from taxes has the burden of proving his entitlement beyond a reasonable doubt. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

Judicial Review.

The standard of review for tax exemption cases is trial de novo on the record, and appellate court will not reverse the chancellor's findings of fact unless they

are clearly erroneous. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

Machinery and Equipment.

General Assembly, by the use of the terms machinery and equipment, intended implements, tools, or devices of some degree of complexity and continuing utility and not materials that become fully integrated into a construction project, the utility of which ends upon the termination of each project. *Ragland v. Dumas*, 292 Ark. 515, 732 S.W.2d 119 (1987).

The taxpayer was entitled to an exemption for initial purchases of chemicals used in the manufacturing of aircraft parts since those chemicals came within the definition of equipment because (1) the chemicals served as instruments or tools to soften metal or mill away excess metal in the manufacturing process, and (2) the chemicals possessed continuing utility. *Weiss v. Chem-Fab Corp.*, 336 Ark. 21, 984 S.W.2d 395 (1999).

The taxpayer was not entitled to an exemption for replacement purchases of chemicals used in the manufacturing of aircraft parts in light of the contention of the Department of Finance and Administration that the issue of whether the replacement chemicals were more efficient or had a longer useful life than the initial chemicals should have been determined at the time the initial chemicals were originally purchased and not at the time of replacement. *Weiss v. Chem-Fab Corp.*, 336 Ark. 21, 984 S.W.2d 395 (1999).

Manufacturing.

Evidence that plaintiff produced its own syrup which was then mixed with other ingredients to produce the finished product was sufficient to show that plaintiff was in the business of producing and selling bottled carbonated soft drinks and entitled it to the exemption as a manufacturer from use tax. *Arkansas Beverage Co. v. Heath*, 257 Ark. 991, 521 S.W.2d 835 (1975).

Where seller of machinery or equipment sells such machinery to graphic arts manufacturers for use in manufacturing finished products such as stationery, wedding, and business announcements, flyers, books, and business cards, the seller is not entitled to exemption from the gross re-

ceipts (sales) tax under subsection (a) of this section, since commercial printers who purchase the machinery are not "manufacturers" under this section, because printing, binding, and photography processes are not manufacturing in the ordinary meaning of the term, which is the meaning with which the term must be construed under subsection (b) of this section. *Western Paper Co. v. Qualls*, 272 Ark. 466, 615 S.W.2d 369 (1981).

Ready-mix concrete plants that are used to mix cement, sand, gravel, and water to produce ready-mix concrete are not exempt from taxation under subsection (a) of this section as manufacturing equipment, since the machinery is just used for mixing materials and does not produce a truly finished product, such as concrete blocks. *Ragland v. Lyon's Mach. Co.*, 279 Ark. 147, 649 S.W.2d 401 (1983).

Molds and Dies.

Items, such as molds or dies, that are destroyed or disposed of in the manufacturing process, do not qualify for the exemption in § 26-52-401(12)(B) because if they are destroyed, there is no possibility of double taxation. *Pledger v. C.B. Form Co.*, 316 Ark. 22, 871 S.W.2d 333 (1994).

Subdivision (c)(2)(B)(i) of this section provides an exemption for molds that determine the physical characteristics of the finished product; this section does not require that they be permanent since molds need not have a "continuing utility" to come within the statutory definition of equipment. *Pledger v. C.B. Form Co.*, 316 Ark. 22, 871 S.W.2d 333 (1994).

The meaning of the words used in mold and die exemption is clear: there is an exemption for molds that determine the physical characteristics of the finished product, and, when the sentence in the subsection exempting molds is read in full, there is no expressed legislative intent that equipment or machinery have "continuing utility." *Pledger v. C.B. Form Co.*, 316 Ark. 22, 871 S.W.2d 333 (1994).

Manufacturer's plaster and cardboard forms, or molds, sold to a single customer who utilized the forms to build fuel cells that fit into a cavity in the wing and fuselage of military and commercial aircraft, were exempt from the gross receipts

or sales tax under subdivision (c)(2)(B)(i) of this section. *Pledger v. C.B. Form Co.*, 316 Ark. 22, 871 S.W.2d 333 (1994).

Pollution Control.

The exemption from taxes under subdivision (a)(3) of this section is based on the requirement that pollution-control equipment be installed and used to prevent or reduce air or water pollution that results from the operation of a plant or facility, and the exemption did not apply to taxpayer's lease of equipment for a reclamation project. *ALCOA v. Weiss*, 329 Ark. 225, 946 S.W.2d 695 (1997).

Used Directly.

Trucks used on private property to carry materials and not used in processing, fabricating, or assembly of raw material do not qualify for exemption from the sales tax under subsection (c) of this section. *Heath v. Midco Equip. Co.*, 256 Ark. 14, 505 S.W.2d 739 (1974).

Where diesel locomotive cranes and 72-inch magnet were used as tools not only to move but to roll and position the old

railroad tank cars during the time that the culverts were being fabricated, and as such were necessary and integral parts of the manufacturing operation, the trial court erred in classifying such machinery as "transportation equipment." *Arkansas Ry. Equip. Co. v. Heath*, 257 Ark. 651, 519 S.W.2d 45 (1975).

Where there was a showing that a case conveyor, bottling conveyor, and an electronic bottle inspector in bottling plant were so much a part of a continuous and well-synchronized operation that, if one of the machines failed to operate, the entire operation stopped, there was sufficient evidence that the machines were an integral part of the manufactured product and exempt. *Arkansas Beverage Co. v. Heath*, 257 Ark. 991, 521 S.W.2d 835 (1975).

Cited: *Frank Lyon Co. v. United States*, 435 U.S. 561, 98 S. Ct. 1291, 55 L. Ed. 2d 550 (1978); *Southern Steel & Wire Co. v. Wooten*, 276 Ark. 37, 631 S.W.2d 835 (1982); *Bosworth v. Pledger*, 305 Ark. 598, 810 S.W.2d 918 (1991).

26-52-403. Farm equipment and machinery.

(a) As used in this section:

(1)(A) "Farm equipment and machinery" means implements used exclusively and directly in farming.

(B) "Farm equipment and machinery" includes:

(i) Irrigation pipe used to carry water from an irrigation well to the crops produced in farming regardless of whether the irrigation pipe is used above ground or is buried underground; and

(ii) Implements used to harvest crops produced in farming by others.

(C) However, "farm equipment and machinery" shall not include implements used in the production and severance of timber, motor vehicles of a type subject to registration, airplanes, or hand tools; and

(2) "Farming" means the agricultural production of food or fiber as a business or the agricultural production of grass sod or nursery products as a business.

(b) The sale of new and used farm equipment and machinery shall not be subject to the Arkansas gross receipts tax levied by § 26-52-301(1), (2), (3)(A), (3)(B)(i)-(iii), (4), and (5) but shall be exempt from those levies.

(c) The Director of the Department of Finance and Administration shall promulgate rules and prescribe forms for claiming the exemption provided by this section.

History. Acts 1981, No. 432, § 1; A.S.A. 1947, § 84-1904.10; Acts 1987, No. 350, § 1; 1995, No. 587, § 1; 1999, No. 1033, § 1; 2005, No. 1994, § 208; 2007, No. 181, § 20.

Amendments. The 2005 amendment inserted "Class A" in (c)(3)..

The 2007 amendment rewrote (c).

Effective Dates. Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

26-52-404. Feedstuffs used for livestock.

(a) All feedstuffs used in the commercial production of livestock or poultry in this state are exempt from the Arkansas gross receipts tax levied by this chapter.

(b) As used in this section, "feedstuffs" means:

- (1) Processed or unprocessed grains;
- (2) Mixed or unmixed grains;
- (3) Whole or ground hay;
- (4) Whole or ground straw;
- (5) Hulls, whether or not mixed with other materials; and
- (6) All food supplements, whether or not nutritional or medicinal, including hormones, antibiotics, vitamins, minerals, and medications ingested by poultry or livestock.

History. Acts 1955, No. 94, § 1; 1985, No. 1013, § 3; A.S.A. 1947, § 84-1924.

Publisher's Notes. This section is also codified as § 26-53-120.

CASE NOTES

Evidence.

Poultry distributor who fails to carry burden of showing that "water feed addi-

tives" are "feedstuffs" is not entitled to tax exemption. *Hervey v. Tyson's Foods, Inc.*, 252 Ark. 703, 480 S.W.2d 592 (1972).

26-52-405. Products used for livestock, poultry, and agricultural production.

The gross receipts or gross proceeds derived from sales of the following are exempt from the Arkansas gross receipts tax levied by this chapter:

- (1) Agricultural fertilizer;
- (2) Agricultural limestone; and
- (3) Agricultural chemicals, including, but not limited to:
 - (A) Agricultural pesticides and herbicides used in commercial production of agricultural products;
 - (B) Vaccines, medications, and medicinal preparations used in treating livestock and poultry being grown for commercial purposes; and
 - (C) Chemicals, nutrients, and other ingredients used in the commercial production of yeast.

History. Acts 1973, No. 68, § 1; 1985, No. 1013, § 1; A.S.A. 1947, § 84-1905.2;

Acts 1993, No. 98, § 1; 1993, No. 151, § 1; 1995, No. 1296, § 85.

26-52-406. Prescription drugs and oxygen.

(a)(1) The gross receipts or gross proceeds derived from the sale, purchase, or use of prescription drugs by licensed pharmacists, hospitals, or physicians when sold, purchased, or administered for human use and from the sale of oxygen sold for human use on prescription of a licensed physician shall be exempt from the Arkansas gross receipts tax levied by this chapter and the Arkansas compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(2) The withdrawal of prescription drug samples for free distribution from a stock or inventory, whether located within or outside the State of Arkansas, is exempt from the tax imposed by this chapter.

(b) The Director of the Department of Finance and Administration shall adopt such appropriate rules and regulations as the director deems necessary to assume the effective and efficient administration of the exemption provided for in this section and to prevent abuse thereof.

History. Acts 1979, No. 54, §§ 1, 2; 1904.3, 84-1904.4; Acts 1987, No. 416, § 1; 1985, No. 941, § 1; A.S.A. 1947, §§ 84- 1997, No. 704, § 1; 1997, No. 884, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Taxation, 8 U. Ark. Little Rock L.J. 601.

CASE NOTES**ANALYSIS**

Construction.
Applicability.

Construction.

The exemption provision must be strictly construed against the exemption. *Dunhall Pharmaceuticals, Inc. v. State*, 295 Ark. 483, 749 S.W.2d 666 (1988).

Applicability.

Purchases by dentists are not excluded from taxation by the exemption in this section. *Dunhall Pharmaceuticals, Inc. v. State*, 295 Ark. 483, 749 S.W.2d 666 (1988).

26-52-407. Certain vessels.

The gross receipts and gross proceeds derived from the sale and purchase of vessels, barges, and towboats of at least fifty (50) tons load displacement, and parts and labor used in the repair and construction of them, are exempt from the Arkansas gross receipts tax levied by this chapter.

History. Acts 1979, No. 449, § 1; A.S.A. 1947, § 84-1904.8.

26-52-408. Certain bagging, packaging, or tying materials.

(a) Gross receipts and gross proceeds derived from the sale of bagging and other packaging and tie materials sold to and used by cotton gins in Arkansas for packaging or tying baled cotton are exempt from the Arkansas gross receipts tax.

(b) Gross receipts and gross proceeds derived from the sale of twine which is used in the production of tomato crops are exempt from the Arkansas gross receipts tax.

History. Acts 1975, No. 759, § 1; A.S.A. 1947, § 84-1904.1.

26-52-409. Aircraft held for resale and used for rental or charter.

(a)(1) Any person, whether an established business or an individual, engaged in the business of selling aircraft in this state and holding a retail sales tax permit may purchase aircraft exempt for resale and use the aircraft for rental or charter service without payment of sales or use tax for a period of not to exceed one (1) year from the date of purchase of the aircraft.

(2) In the case of aircraft purchased for resale which require substantial modification or substantial refurbishing prior to resale, the purchaser may use the aircraft for rental or charter service without payment of sales or use tax for a period of not to exceed two (2) years from the date of purchase of the aircraft.

(b) The use of the aircraft for rental or charter during the applicable one-year or two-year holding period described in subsection (a) of this section shall not constitute a withdrawal from stock, and the purchaser shall not be required to pay the sales tax on the purchase price of the aircraft held in stock and used for such purposes.

(c) The aircraft purchaser shall collect and remit gross receipts and short-term rental tax on the rentals and shall subsequently collect and remit the gross receipts tax on the aircraft at the time of subsequent sale in the manner required by law.

(d) If the purchaser fails to sell the aircraft during the applicable holding period, the purchaser shall be liable for sales or use tax on his or her purchase price of the aircraft.

History. Acts 1975, No. 1008, § 1; A.S.A. 1947, § 84-1904.2; Acts 1995, No. 499, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Taxation, 8 U. Ark. Little Rock L.J. 601.

CASE NOTES

One-Year Period.

The language "at the time of subsequent sale" in subsection (c) of this section refers only to those aircraft sold during the one-year holding period. *Weiss v. Central Flying Serv., Inc.*, 326 Ark. 685, 934 S.W.2d 211 (1996).

This section provides that the gross receipts tax on the purchase of an airplane

used for rental or charter service and held for more than one year without resale must be paid immediately after the lapse of one year from the date of purchase, not when the airplane is actually sold after the lapse of one year. *Weiss v. Central Flying Serv., Inc.*, 326 Ark. 685, 934 S.W.2d 211 (1996).

26-52-410. Motor vehicles sold to political subdivisions and schools.

(a) No tax shall be levied or collected upon gross receipts derived from the sale of motor vehicles to municipalities and counties or to state-supported colleges and universities or to public school districts in this state.

(b) No tax shall be levied or collected upon the gross receipts derived from the sale of school buses to school districts of Arkansas.

(c) No tax shall be levied or collected upon the gross receipts derived from the sale of school buses if at the time of sale the school bus purchaser has contracted with an Arkansas school district to provide school bus service for the school district, the school buses purchased are used exclusively in providing such service, and the obligation to pay any taxes related to the school buses is contractually assumed by the school district. This exemption shall apply only to school buses which are equipped in accordance with § 6-19-117(a)-(d).

History. Acts 1947, No. 339, § 1; 1971, No. 49, § 1; A.S.A. 1947, §§ 84-1904.9, 84-1905; Acts 1997, No. 1303, § 1.

26-52-411. Admission tickets sold by municipalities and counties.

The gross receipts or gross proceeds derived by municipalities and counties of this state from the following are exempt from the excise tax levied by this chapter:

(1) Sale of tickets or admissions to places of amusement or to athletic, entertainment, or recreational events;

(2) Fees for the privilege of having access to or the use of amusement, entertainment, athletic, or recreational facilities; and

(3)(A) Free or complimentary passes, tickets, dues, or fees for access to or the use of amusement, athletic, entertainment, or recreational facilities.

(B) Free or complimentary passes, tickets, dues, or fees described in subdivision (3)(A) of this section are declared to have a value equivalent to the sale price of passes, tickets, dues, or fees of like kind.

History. Acts 1981, No. 509, § 1; A.S.A. 1947, § 84-1904.11; Acts 2007, No. 657, § 1.

Amendments. The 2007 amendment added “and counties” to the section heading; and rewrote the section.

26-52-412. Admission tickets sold by schools, universities, and colleges.

(a) Gross receipts or gross proceeds from the sale of tickets for admission to athletic events and interscholastic activities at public and private elementary and secondary schools in this state shall be exempt from the provisions of the Arkansas gross receipts tax.

(b) Gross receipts or gross proceeds from the sale of tickets for admission to athletic events at universities and colleges in this state, whether or not supported by public funds, shall be exempt from the provisions of the Arkansas gross receipts tax.

History. Acts 1973, No. 516, § 2; A.S.A. 1947, § 84-1942; Acts 1995, No. 124, § 2.

26-52-413. Products sold to orphans’ or children’s homes.

All sales to all orphans’ homes in this state, or children’s homes, which are not operated for profit and whether operated by a church, religious organization, or other benevolent charitable association shall be exempt from the gross receipts or gross proceeds tax, commonly referred to as the sales tax.

History. Acts 1949, No. 82, § 1; A.S.A. 1947, § 84-1905.1.

26-52-414. Products sold to humane societies.

(a) All sales to humane societies which are not operated for profit and are organized under the provisions of § 20-19-101 for the prevention of cruelty to animals shall be exempt from this chapter.

(b) The Director of the Department of Finance and Administration shall issue a certificate to the officers of each humane society organized under § 20-19-101, which shall indicate the identity of the humane society officer and the humane society with which the humane society officer is associated. Sales to a humane society shall be exempt from the Arkansas gross receipts tax upon presentation of the certificate.

History. Acts 1979, No. 417, §§ 1, 2; A.S.A. 1947, §§ 84-1904.6, 84-1904.7.

26-52-415. New automobiles sold to blind veterans.

(a) Gross receipts and gross proceeds derived from the sale of new automobiles to a veteran of the United States armed services who is blind as the result of a service-connected injury shall be exempt from the Arkansas gross receipts tax.

(b) This exemption shall apply only to those persons who furnish the Department of Finance and Administration a statement from the United States Department of Veterans Affairs certifying that the individual is a veteran of the United States armed services and has been blinded as the result of a service-connected injury. This statement shall be supplied to the department upon application for a vehicle license.

(c) The exemption allowed by this section shall be available only on the gross receipts or gross proceeds derived from the sale of one (1) new automobile every two (2) years to a veteran who complies with the requirements of this section.

(d) As used in this section, "automobile" means a passenger automobile or pickup truck but does not include trucks with a maximum gross load in excess of three-quarters ($\frac{3}{4}$) of one (1) ton and does not include any trailer.

History. Acts 1979, No. 70, § 1; A.S.A. 1947, § 84-1904.5.

26-52-416. Electricity sold to low income households.

(a) The sale of the first five hundred kilowatt hours (500 kWh) of electricity per month and the total franchise taxes billed to each residential customer whose household income is no more than twelve thousand dollars (\$12,000) per year shall be exempt from the Arkansas gross receipts tax levied pursuant to § 26-52-301(1), (2), (3)(A), (B)(i)-(iii), (4), and (5), and all other state excise taxes which would otherwise be levied thereon.

(b) As used in this section, "income" and "household income" mean the same as ascribed to them in § 26-51-602 [repealed].

(c) The exemption provided by this section shall apply to sales by all electric utilities operating in this state, whether investor-owned utilities, electric cooperative corporations created or existing under the authority of § 23-18-301 et seq., or municipally owned electric utilities.

(d) Persons qualifying for the exemption provided by this section shall notify, on forms provided by the Director of the Department of Finance and Administration, the electric utility providing service to them of the residential customer's intention to claim the exemptions provided in this section.

(e)(1) After a person has qualified for this exemption no additional application shall be required. When a person who has qualified for this exemption has household income exceeding the twelve-thousand-dollar limit, the person is disqualified and must notify the electric utility on forms provided by the director. The notice form must be mailed to the electric utility on or before March 1 of the year following the year the household income exceeds twelve thousand dollars (\$12,000).

(2) The provisions of this subsection shall be in full force and effect for years beginning on or after December 31, 1990.

(f)(1) If a person does not notify the electric utility and continues to receive this exemption after his or her household income exceeds the

qualification limit, such person shall be liable for the amount of the tax exemption received after the time for notification. The electric utility company shall bill the amount of tax due as a result of disqualification and remit the tax to the director.

(2) The provisions of this subsection shall be in full force and effect for years beginning on or after December 31, 1990.

History. Acts 1983 (1st Ex. Sess.), No. 120, §§ 1, 2; A.S.A. 1947, §§ 84-1904.12, 84-1904.13; Acts 1991, No. 304, §§ 1, 2.

A.C.R.C. Notes. Section 26-51-602 referred to in subsection (b) of this section was repealed by Acts 2000 (2nd Ex. Sess.), Nos. 1 and 2, § 7. Section 26-51-602 provided the following definitions for "income" and "household income":

"Household income" means the combined income received by members of a household during a calendar year.

"Income" means gross income as defined in the Arkansas Income Tax Act, as amended, § 26-51-101 et seq., less deductions allowed under § 26-51-423(a)(1). It shall also include alimony, support money, cash public assistance and relief, but shall not include relief granted under this subchapter; the gross amount of any pension or annuity, including all monetary retire-

ment benefits from whatever source derived including but not limited to railroad retirement benefits, all payments received under the federal social Security Act, and veterans' disability pensions; all dividends and interest from whatever source derived not included in gross income, workers' compensation, and the gross amount of 'loss of time insurance' but does not include gifts from nongovernmental sources, surplus food, or other relief in kind supplied by a governmental agency. However, in the case of a claimant who is a World War I veteran of the United States armed services or the widow of such a veteran, the term 'income' as used herein shall not include federal or state retirement or pension benefits or disability benefits, railroad retirement benefits, or social security benefits."

26-52-417. Motor fuels used in municipal buses.

(a) The gross receipts or gross proceeds derived from the sale of motor fuel to an owner or operator of a motor bus operated on designated streets according to regular schedule and under municipal franchise which is used for municipal transportation purposes shall be exempt from the tax levied in this chapter.

(b) However, it shall be unlawful for the owner or operator of a motor bus operating under municipal franchise as provided in this section to use any or permit the use of any motor fuel upon which the gross receipts tax has not been paid in any motor vehicle other than a motor bus operated on designated streets according to regular schedules under municipal franchise.

(c)(1) Any owner or operator of a motor bus permitting motor fuel to be used in violation of this section shall be guilty of a violation and upon conviction shall be fined in an amount of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000).

(2) In addition to the fine in subdivision (c)(1) of this section, the owner or operator shall be liable to the State of Arkansas for a penalty of triple the amount of gross receipts tax due the State of Arkansas on any motor fuel upon which the gross receipts tax has not been paid and which was used in violation of the provisions of this section.

History. Acts 1971, No. 600, § 3; A.S.A. 1947, § 75-1148.9; Acts 2005, No. 1994, § 173.

Amendments. The 2005 amendment substituted “violation” for “misdemeanor” in (c)(1).

26-52-418. Out-of-state telephones sent to Arkansas for repairs.

From and after July 1, 1989, the Arkansas gross receipts tax levied by §§ 26-52-301 et seq. and 26-52-501 et seq. and all city and county sales taxes shall not be levied against the repair or refurbishing of telephone instruments which are sent into this state for repair or refurbishing and then shipped back to the state of origin.

History. Acts 1987, No. 191, § 2.

26-52-419. Insulin and test strips.

There is hereby exempted from this chapter the gross receipts and gross proceeds derived from the sale of insulin and test strips for testing blood sugar levels in human beings.

History. Acts 1991, No. 215, § 1.

26-52-420. New motor vehicles purchased by nonprofit organizations or with Urban Mass Transit Administration funds.

Gross receipts or gross proceeds derived from the sale of new motor vehicles which are purchased by nonprofit organizations and used for the performance of contracts with the Department of Human Services or new motor vehicles purchased with Urban Mass Transit Administration funds shall be exempt from the taxes levied under this chapter, the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and all other state and local sales and use taxes, provided that the motor vehicles meet the following requirements:

(1) The vehicles are purchased in lots of ten (10) vehicles or more and therefore are sold at fleet price by the manufacturer;

(2) The vehicles meet or exceed the state specifications for that class of vehicles as prescribed in the state purchasing law and regulations promulgated thereunder; and

(3) The vehicles are used for transportation under the Department of Human Services' programs for the aging, disabled, mentally ill, and children and family services.

History. Acts 1991, No. 910, § 1.

“This act shall become effective on August

Effective Dates. Acts 1991, No. 910, § 2, provided:

1, 1991.”

26-52-421. Nonprofit food distribution agencies.

The gross receipts or gross proceeds derived from the sale of food and food ingredients to nonprofit agencies organized under the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq., for free distribution to

the poor and needy shall be exempt from the Arkansas gross receipts tax levied by this chapter.

History. Acts 1993, No. 1144, § 1; substituted “food and food ingredients” for 2007, No. 181, § 21. “foodstuffs.”

Publisher’s Notes. Acts 1993, No. 1144, § 1, is also codified as § 26-53-136. **Effective Dates.** Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

Amendments. The 2007 amendment

26-52-422. Manufacturing forms.

Forms constructed of plaster, cardboard, fiberglass, natural fibers, synthetic fibers, or composites thereof which determine the physical characteristics of an item of tangible personal property and which are destroyed or consumed during the manufacture of the item for which the destroyed or consumed form was built are hereby exempt from the taxes levied in this chapter.

History. Acts 1993, No. 1001, § 1.

Publisher’s Notes. Acts 1993, No. 1001, § 1, is also codified as § 26-53-133.

26-52-423. Natural gas used to make glass.

The gross receipts or gross proceeds derived from sales of natural gas used as fuel in the process of manufacturing glass is hereafter exempt from:

(1) The Arkansas gross receipts tax levied by §§ 26-52-301 and 26-52-302;

(2) The Arkansas compensating use tax levied by §§ 26-53-106 and 26-53-107; and

(3) All city and county sales and use taxes.

History. Acts 1993, No. 1140, § 1; substituted “§§ 26-52-301 and 26-52-302” for “§§ 26-52-301, 26-52-302, and 26-52-1002.”

Publisher’s Notes. Acts 1993, No. 1140, § 1, is also codified as §§ 26-53-134, 26-74-102, and 26-75-101. **Effective Dates.** Acts 2007, No. 182, § 32: Jan. 1, 2008.

Amendments. The 2007 amendment

26-52-424. Sales to Fort Smith Clearinghouse.

The gross receipts or gross proceeds derived from sales to the Community Service Clearinghouse, Inc., of Fort Smith are hereafter exempt from:

(1) The Arkansas gross receipts tax levied by §§ 26-52-301, 26-52-302, and 26-63-402;

(2) The Arkansas compensating use tax levied by §§ 26-53-106 and 26-53-107; and

(3) All city and county sales and use taxes.

History. Acts 1993, No. 913, § 1; 2007, No. 182, § 22.

Publisher's Notes. Acts 1993, No. 913, § 1, is also codified as §§ 26-53-135, 26-74-103, and 26-75-102.

Amendments. The 2007 amendment substituted "26-63-402" for "26-52-1002."

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-52-425. Substitute fuel for manufacturing.

(a) There is specifically exempted from the tax imposed by §§ 26-52-301 and 26-52-302, the gross receipts or gross proceeds derived from the sale of substitute fuel used in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in the State of Arkansas.

(b)(1) "Manufacturing" or "processing" means the same as set out in § 26-52-402(b).

(2)(A) "Substitute fuel" means products or materials which have been derived from tires, from municipal or other solid waste, from used motor oil, from used railroad ties, or from petroleum-based waste, for use in producing heat or power by burning.

(B) Provided, however, that "solid waste" shall be strictly construed to only include waste as commonly understood on the date of enactment, excluding solid wood chips and other wood by-products.

History. Acts 1993, No. 1024, § 1; 1995, No. 1134, § 1; 1995, No. 1296, § 86; 1997, No. 825, § 1.

phrase "on the date of enactment" in subdivision (b)(2)(B) of this section, Acts 1995, No. 1134, was signed by the Governor on April 10th, 1995.

A.C.R.C. Notes. In regard to the

26-52-426. Railroad rolling stock manufactured for use in interstate commerce.

(a) The gross receipts or gross proceeds derived from the sale or lease of railroad rolling stock manufactured for use in transporting persons or property in interstate commerce is exempt from the gross receipts tax levied by this chapter.

(b)(1) As used in this section, "railroad rolling stock" means completed railroad locomotives and completed railroad cars designed to haul either passengers or freight.

(2)(A) "Railroad rolling stock" shall not include repair parts or materials used to repair locomotives or railroad cars, components of railroad cars or locomotives, trailers, or any property not used directly in the transportation of passengers or freight.

(B) "Railroad rolling stock" shall also not include machinery used to repair or maintain railroad cars, locomotives, track, railroad ties, or railroad roadway.

History. Acts 1994 (2nd Ex. Sess.), No. 25, § 1.

26-52-427. Property purchased for use in performance of construction contract.

(a) A contractor that purchases tangible personal property which becomes a recognizable part of a completed structure or improvement to real property and which is purchased for use or consumption in the performance of construction contracts shall be entitled to a rebate on any additional gross receipts tax or compensating use tax levied by the state or any city or county if:

(1) The construction contract for which the tangible personal property was purchased is entered into prior to the effective date of the levy of the additional state, city, or county gross receipts tax or compensating use tax; and

(2) The contractor paid the additional gross receipts or compensating use tax to the seller.

(b) As used in this section, "construction contract" means a contract to construct, manage, or supervise the construction, erection, or substantial modification of a building or other improvement or structure affixed to real property. "Construction contract" shall not mean a contract to produce tangible personal property.

(c) The rebate provided by this section shall apply to tangible personal property purchased within five (5) years from the effective date of the levy of the additional state, city, or county gross receipts tax or compensating use tax.

(d) The rebate provided by this section shall not apply to cost-plus contracts which allow the contractor to pass any additional tax on to the principal as a part of the contractor's costs.

(e) Interest shall not accrue or be paid on an amount subject to a claim for rebate pursuant to this section.

(f) The Director of the Department of Finance and Administration shall promulgate rules and prescribe forms for claiming a rebate as provided by this section.

History. Acts 1995, No. 387, §§ 1-3; 2007, No. 181, § 22.

Publisher's Notes. Acts 1995, No. 387, §§ 1-3 are also codified as § 26-53-138.

Amendments. The 2007 amendment, in (a), added (2) and designated part of the existing provisions as (1), in present (a)(1) substituted "A contractor that purchases tangible personal property" for "Tangible personal property," and substituted "en-

titled to a rebate on" for "exempt from"; substituted "rebate" for "exemption" in (c); substituted "rebate provided by this section" for "exemption" in (d); added (e) and (f); and made related and stylistic changes.

Effective Dates. Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

26-52-428. Railroad parts, cars, and equipment.

There is specifically exempted from any tax imposed by this chapter, as amended, including, but not limited to, §§ 26-52-301 and 26-52-302, the gross receipts or gross proceeds derived from the sale of parts and other tangible personal property incorporated into or which ultimately become a part of railroad parts, railroad cars, and equipment brought

into the State of Arkansas solely and exclusively for the purpose of being repaired, refurbished, modified, or converted within this state.

History. Acts 1995, No. 848, § 1.

26-52-429. Gas and energy produced from biomass.

(a)(1) The gross receipts or gross proceeds derived from the sale of gas produced from biomass in a facility meeting all of the eligibility requirements for the credit allowed under 26 U.S.C. § 45k, as in effect on December 31, 1996, and sold to an entity for the purpose of generating steam, hot air, or electricity to be sold to the gas producer are exempt from the tax levied by this chapter.

(2) The gross receipts or gross proceeds derived from the sale of steam, hot air, or electricity from the entity purchasing the gas produced from biomass in a facility meeting all of the eligibility requirements for the credit allowed under 26 U.S.C. § 45k, as in effect on December 31, 1996, to the gas producer are exempt from the tax levied by this chapter.

(b) As used in this section, "gas produced from biomass" means gas produced from any organic material other than:

- (1) Oil and natural gas or any product thereof; or
- (2) Coal, including lignite, or any product thereof.

History. Acts 1997, No. 999, § 1.

26-52-430. Charitable organizations.

(a) The exemptions set forth in this subchapter for a charitable organization shall not extend to sales of new tangible personal property by the charitable organization if the sales compete with sales by for-profit businesses.

(b) A sale by a charitable organization does not compete with a sale by a for-profit business if:

(1) The sales transaction is conducted by a member of the charitable organization and not by any franchisee or licensee;

(2) All the proceeds derived from the sales transaction go to the charitable organization;

(3) The sales transaction is not a continuing one and is held not more than three (3) times a year; and

(4) The dominant motive of the majority of purchasers of the items sold is the making of a charitable contribution, with the purchase of an item being merely incidental and secondary to the dominant purpose of making a gift to the charitable organization.

(c)(1) The provisions of this section shall not apply to a sale made by a nonprofit hospital, a cafeteria at a nonprofit hospital, or a gift shop at a nonprofit hospital, whether operated by the hospital, a hospital auxiliary, or other nonprofit organization.

(2) The provisions of this section shall also not apply to a gift shop operated by a charitable organization at a for-profit hospital.

History. Acts 1999, No. 1062, § 1; 2001, No. 628, § 1.

26-52-431. Timber harvesting equipment.

(a) The first fifty thousand dollars (\$50,000) of the purchase price from the sale of machinery or equipment and related attachments that are sold to or used by a person engaged primarily in the harvesting of timber shall be exempt from the taxes levied by this chapter and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) The equipment and related attachments are not exempt unless they are:

(1) Purchased by a person whose primary activity is the harvesting of timber; and

(2) Used exclusively in the off-road activity of harvesting of timber.

(c) The exemption provided in this section shall not apply to a purchase of a repair or replacement part for the equipment.

(d) As used in this section:

(1) "Equipment used in the harvesting of timber" means all off-road equipment and related attachments used in every forestry procedure starting with the severing of a tree from the ground through the point at which the tree or its parts in any form have been loaded in the field in or on a truck or other vehicle for transport to the place of use;

(2) "Machinery or equipment" means only complete systems or units that operate exclusively and directly in the harvesting of timber;

(3) "Off-road equipment" means and includes skidders, feller bunchers, delimbers of all types, chippers of all types, loaders of all types, and bulldozers equipped with grapples used as skidders; and

(4) "Primary activity" means the principal activity in which a person is engaged and to which more than fifty percent (50%) of all the resources of his or her activities are committed.

(e)(1) The exemption provided by this section may be administered as a rebate.

(2) The Director of the Department of Finance and Administration is authorized to promulgate rules to administer this exemption in the form of a rebate.

History. Acts 1999, No. 1334, § 1; 2001, No. 622, § 1; 2007, No. 860, § 4.

A.C.R.C. Notes. As enacted by Acts 1999, No. 1334, § 1, and as amended by Acts 2001, No. 622, § 1, this section contained a subsection (e) that read "This section shall be effective beginning July 1, 1999."

Amendments. The 2007 amendment added (e).

Effective Dates. Acts 2007, No. 860, § 7, provided: "Sections 1–6 of this act will become effective on January 1, 2008."

26-52-432. [Repealed.]

Publisher's Notes. This section, concerning assistance to owners of agricultural aircraft damaged during January

1999, was repealed by Acts 2007, No. 827, § 222. The section was derived from Acts 1999, No. 952, § 1.

26-52-433. Durable medical equipment, mobility-enhancing equipment, prosthetic devices, and disposable medical supplies.

(a)(1) Gross receipts or gross proceeds derived from the rental, sale, or repair of durable medical equipment prescribed by a physician, mobility-enhancing equipment prescribed by a physician, a prosthetic device prescribed by a physician, and disposable medical supplies prescribed by a physician shall be exempt from all state and local sales and use taxes.

(2) This exemption shall apply only to durable medical equipment, mobility-enhancing equipment, a prosthetic device, and disposable medical supplies sold to a specific patient pursuant to a prescription written before the sale.

(b) As used in this section:

(1) "Disposable medical supplies" includes without limitation the following:

(A) Ostomy, urostomy, and colostomy supplies;

(B) Enemas, suppositories, and laxatives used in routine bowel care; and

(C) Disposable undergarments and linen savers;

(2)(A) "Durable medical equipment" means equipment, including repair and replacement parts for the equipment, that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury;

(iv) Is not worn in or on the body; and

(v) Is for home use.

(B) "Durable medical equipment" does not include mobility-enhancing equipment;

(3)(A) "Mobility-enhancing equipment" means equipment, including repair and replacement parts for the equipment, that:

(i) Is primarily and customarily used to provide or increase the ability to move from one (1) place to another and which is appropriate for use either in a home or a motor vehicle;

(ii) Is not generally used by a person with normal mobility; and

(iii) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(B) "Mobility-enhancing equipment" does not include durable medical equipment;

(4) "Physician" means a person licensed under § 17-95-401 et seq.;

(5) "Prescription" means an order, formula, or recipe issued in any form and transmitted by an oral, written, electronic, or other means of transmission by a duly licensed physician or practitioner authorized to issue prescriptions under Arkansas law; and

(6)(A) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:

- (i) Artificially replace a missing portion of the body;
- (ii) Prevent or correct physical deformity or malfunction; or
- (iii) Support a weak or deformed portion of the body.

(B) "Prosthetic device" does not include corrective eyeglasses, contact lenses, and dental prostheses.

(c)(1) Notwithstanding subdivision (a)(2) of this section, a patient may claim the exemption under this section for a wheelchair lift or automobile hand controls prescribed for the patient after the sale if:

(A) The wheelchair lift or automobile hand controls are purchased in conjunction with the purchase of a motor vehicle;

(B) The gross receipts or gross proceeds derived from the sale of the wheelchair lift or automobile hand controls are separately stated on the invoice or bill of sale for the purchase of the motor vehicle; and

(C) The patient has a prescription for the wheelchair lift or automobile hand controls at the time the motor vehicle is registered.

(2) A patient purchasing a wheelchair lift or automobile hand controls directly from a vendor of adaptive medical equipment for subsequent installation shall possess a prescription for the wheelchair lift or automobile hand controls prior to the sale in compliance with subdivision (a)(2) of this section.

History. Acts 1991, No. 414, § 1; 2003, No. 1273, § 2; 2003, No. 1473, § 64; 2007, No. 140, §§ 1, 2; 2007, No. 181, §§ 23, 45; 2007, No. 860, § 5.

A.C.R.C. Notes. This section was formerly codified as § 26-3-307. Former § 26-3-307 was recodified by Acts 2003, No. 1473, § 64, as present §§ 26-52-433 and 26-53-141.

Amendments. The 2003 amendment by No. 1273 rewrote the section.

The 2007 amendment by No. 140 added (c) and (d).

The 2007 amendment by No. 181 inserted "prosthetic device" in the section heading; in (a), inserted "a prosthetic device prescribed by a physician" in (a)(1), in (a)(2) inserted "prosthetic device" and substituted "sold to a specific patient pursuant to a prescription written before the sale" for "prescribed for a specific patient before the sale," and deleted former (a)(3); in (b), rewrote (b)(1), inserted (b)(2)(B) and redesignated (b)(2) accordingly, deleted former (b)(3)(B) and inserted its language as present (b)(3)(B), inserted "(1)" in present (b)(3)(A)(i), inserted present (b)(5) and redesignated the following subdivision accordingly, and in present (b)(6)(A) and (B), substituted "Prosthetic device" for "Prosthetics"; and made related and stylistic changes.

The 2007 amendment by No. 860 deleted former (b)(1)(B) and redesignated the remaining subsections accordingly; added (b)(2)(A)(v); and made related changes.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the

Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In

order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 140, § 5: Oct. 1, 2007. Effective date clause provided: "Effective date. Sections 1 – 4 of this act are effective on the first day of the calendar quarter following the effective date of this act."

Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

Acts 2007, No. 860, § 7, provided: "Sections 1–6 of this act will become effective on January 1, 2008."

RESEARCH REFERENCES

A.L.R. Sales and use tax exemption for medical supplies. 30 A.L.R.5th 494.

26-52-434. Fire protection equipment and emergency equipment.

(a) The gross receipts or gross proceeds derived from a purchase of or a repair to fire protection equipment and emergency equipment to be owned by and exclusively used by a volunteer fire department are exempt from the taxes levied under:

- (1) This chapter;
- (2) The Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.; and
- (3) All other state, local, and county sales and use taxes.

(b) The gross receipts or gross proceeds derived from a purchase of supplies and materials to be used in the construction and maintenance of volunteer fire departments, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith are exempt from the taxes levied under:

- (1) This chapter;
- (2) The Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.; and
- (3) All other state, local, and county sales and use taxes.

History. Acts 1995, No. 1010, § 1; 1997, No. 441, § 1; 2003, No. 1473, § 65.

A.C.R.C. Notes. This section was formerly codified as § 26-3-309. Former

§ 26-3-309 was recodified by Acts 2003, No. 1473, § 65, as present §§ 26-52-434 and 26-53-142.

26-52-435. Wall and floor tile manufacturers.

(a) The gross receipts or gross proceeds derived from sales of electricity and natural gas used in the process of manufacturing wall and floor tile by manufacturers of tile classified in Standard Industrial Classification 3253 are exempt from:

(1) The Arkansas gross receipts tax levied by §§ 26-52-301 and 26-52-302;

(2) The Arkansas compensating use tax levied by §§ 26-53-106 and 26-53-107;

(3) All city and county sales and use taxes.

(b) A manufacturer of wall or floor tile classified in Standard Industrial Classification 3253 must have begun construction of a manufacturing facility in the state prior to January 1, 2003, in order to claim this exemption.

History. Acts 2001, No. 1375, § 1; 2003, No. 1473, § 66; 2007, No. 182, § 23.

A.C.R.C. Notes. This section was formerly codified as § 26-3-310. Former § 26-3-310 was recodified by Acts 2003, No. 1473, § 66, as present §§ 26-52-435 and 26-53-143.

Amendments. The 2007 amendment

substituted “§§ 26-52-301 and 26-52-302” for “§§ 26-52-301, 26-52-302, and 26-52-1002” in (a).

Effective Dates. Acts 2001, No. 1375, § 2, provided: “This act shall be effective on and after July 1, 2003.”

Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-52-436. Certain classes of trucks or trailers.

(a) As used in this section:

(1) “Person” means a natural person who resided in this state at the time of purchasing a truck tractor or semitrailer in this state;

(2) “Semitrailer” means every vehicle with or without motive power, including a pole trailer, drawn by a truck tractor and designed for carrying property; and

(3) “Truck tractor” means a motor vehicle:

(A) Designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn; and

(B) Registered as a Class Five, Class Six, Class Seven, or Class Eight truck as defined by § 27-14-601(a)(3).

(b) Except as provided in subsection (d) of this section, the gross receipts or gross proceeds in excess of nine thousand one hundred fifty dollars (\$9,150) derived from the sale of a new or used truck tractor in this state are exempt from the Arkansas gross receipts tax levied by this chapter.

(c) Except as provided in subsection (d) of this section, the gross receipts or gross proceeds in excess of one thousand dollars (\$1,000) derived from the sale of a new or used semitrailer in this state are exempt from the Arkansas gross receipts tax levied by this chapter.

(d) The exemption in this section does not apply to gross receipts taxes levied by any Arkansas city, town, or county.

History. Acts 2003, No. 551, § 1.

26-52-437. Textbooks and instructional materials for public schools.

(a)(1) As used in this section, “instructional materials” includes:

(A) Traditional books, sheet music, and trade books in printed and bound form;

(B) Activity-oriented educational programs that may include manipulatives;

(C) Hand-held calculators;

(D) Technology-based educational materials and electronic software that require the use of electronic equipment in order to be used in the learning process, except for the equipment required to make use of these materials;

(E) Maps, globes, art supplies, workbooks, flash cards, educational blocks, educational models, manipulatives, and charts for classroom use; and

(F) Video tapes, DVDs, films, or cassettes containing instructional information designed to be presented to students as part of a course of study.

(2) “Instructional materials” does not include:

(A) Items purchased for use in:

(i) Interscholastic extracurricular activities; or

(ii) Administration or maintenance of a school; or

(B) Construction materials or supplies.

(b) Textbooks, library books, and other instructional materials shall be exempt from the gross receipts tax levied by this chapter if purchased by:

(1) An Arkansas school district or Arkansas public school that receives state funding; or

(2) The State of Arkansas for free distribution to Arkansas school districts or Arkansas public schools.

History. Acts 2003 (2nd Ex. Sess.), No. 32, § 1; 2005, No. 1441, § 1.

Amendments. The 2005 amendment redesignated former (a) and (a)(1)-(4) as present (a)(1) and (a)(1)(A)-(D); inserted

“sheet music” in (a)(1)(A); deleted “or other hands on educational material; and” at the end of (a)(1)(C); inserted “and electronic software” in (a)(1)(D); and added present (a)(1)(E), (a)(1)(F) and (a)(2).

26-52-438. Chlor-alkali manufacturing process.

The gross receipts or gross proceeds derived from the sale of electricity used for the production of chlorine and other chemicals using a chlor-alkali manufacturing process are exempt from the gross receipts tax levied by this chapter.

History. Acts 2005, No. 877, § 1.

A.C.R.C. Notes. Acts 2005, No. 877, § 2, provided: "Legislative intent. (a) The General Assembly finds that Arkansas manufacturers that use the chlor-alkali manufacturing process are at a disadvantage when compared to manufacturers in surrounding states where the electricity

used in the chlor-alkali process is exempt.

"(b) The purpose of this act is to provide an exemption to Arkansas manufacturers for electricity used in the chlor-alkali manufacturing process, and place Arkansas chlor-alkali manufacturers on an equal footing with chlor-alkali manufacturers in surrounding states."

26-52-439. Livestock reproduction equipment or substances.

(a) As used in this section:

(1) "Livestock" means any mammal the products of which ordinarily are used for food or human consumption;

(2) "Livestock reproduction equipment" means any of the following used in the reproduction of livestock:

(A) Nitrogen;

(B) Nitrogen tanks; or

(C) Any equipment used to implement the reproduction technique; and

(3) "Livestock reproduction substance" means any natural or artificial substance used in the reproduction of livestock, including semen or embryos.

(b) Any livestock reproduction equipment or livestock reproduction substance shall be exempt from the tax imposed by this chapter.

History. Acts 2005, No. 2168, § 1.

Effective Dates. Acts 2005, No. 2168, § 2, provided: "This act shall apply to the sale of livestock reproduction equipment or livestock reproduction substances sold on the first day of the calendar month

following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days."

26-52-440. Exemption for qualified museums.

(a) As used in this section:

(1) "Exemption certificate" means an exemption certificate issued by the Director of the Department of Finance and Administration under subdivision (d)(1) of this section;

(2) "Nonprofit organization" means any organization described in 26 U.S.C. § 501(c)(3), as in effect on January 1, 2005;

(3) "Qualified museum" means any nonprofit organization that acquires a collection of artwork for purposes of establishing and operating a qualified museum facility, regardless of whether the nonprofit organization may engage in any other charitable activity if the:

(A) Fair market value of the artwork collection of the nonprofit organization for public viewing and exhibition at the qualified museum facility exceeds one hundred million dollars (\$100,000,000) prior to January 1, 2013; and

(B) The director has issued an exemption certificate to the nonprofit organization; and

(4) "Qualified museum facility" means a facility, including the structures, buildings, and any ancillary or related structures or buildings and real property associated with the facility, including auditoriums, parking areas, and educational facilities that house a collection of artwork or other exhibits for public viewing and exhibition if the:

(A) Principal location and primary operations of the facility will be located within the State of Arkansas;

(B) Museum portion of the facility opens to the public after January 1, 2005, and prior to January 1, 2013; and

(C) Aggregate total costs of the construction and acquisition of the facility exceed thirty million dollars (\$30,000,000) prior to January 1, 2013.

(b)(1) The gross receipts or gross proceeds derived from the sale of any tangible personal property or services to a qualified museum are exempt from this chapter.

(2) The exemption provided in subdivision (b)(1) of this section shall also apply to the gross receipts or gross proceeds derived from the sale of materials to a qualified museum or its contractor or agent used in the construction, repair, expansion, or operation of the qualified museum facility.

(c) A nonprofit organization requesting recognition as a qualified museum shall file with the director on forms prescribed by the director a written statement under oath:

(1)(A) Describing the facts upon which the nonprofit organization claims the exemption under this section.

(B) This statement shall be filed prior to first claiming the exemption under this section and shall include facts indicating that the nonprofit organization has a good faith plan and intent to satisfy the conditions under subdivision (c)(2) of this section; and

(2) On or before June 30, 2013, stating that the following conditions have been met:

(A) The nonprofit organization has established and operated prior to January 1, 2013, a facility that houses a collection of artwork or other exhibits for public viewing and exhibition;

(B) The principal location and primary operations of the facility are within the State of Arkansas;

(C) The museum portion of the facility first opened to the public after January 1, 2005, and prior to January 1, 2013;

(D) The aggregate total costs of construction and acquisition of the facility, including the structures, buildings, ancillary or related structures or buildings, real property used in connection with the facility, auditoriums, parking areas, and educational facilities exceeded thirty million dollars (\$30,000,000) prior to January 1, 2013; and

(E) Prior to January 1, 2013, the nonprofit organization acquired a collection of artwork with a fair market value in excess of one hundred million dollars (\$100,000,000) for public viewing and exhibition at the qualified museum facility.

(d)(1) After filing the statement required under subdivision (c)(1) of this section, if the director finds that the nonprofit organization has a good faith plan and intent to satisfy the conditions of subdivision (c)(2) of this section prior to January 1, 2013, the director shall issue an exemption certificate to the nonprofit organization within sixty (60) days after the filing of the statement.

(2) The director may revoke the exemption certificate at any time after it is issued if the director determines that the nonprofit organization is unable to satisfy the conditions under subdivision (c)(2) of this section prior to January 1, 2013.

(3) After filing the statement required under subdivision (c)(2) of this section, if the director determines that the nonprofit organization has not met the conditions under subdivision (c)(2) of this section, the director shall revoke the exemption certificate of the nonprofit organization.

(4) If the nonprofit organization fails to file the statement described in subdivision (c)(2) of this section on or prior to June 30, 2013, the director shall revoke the exemption certificate.

(5) Revocation by the director of an exemption certificate shall be retroactive to the date of its issuance subject to subsection (e) of this section.

(e)(1) If the director revokes the exemption certificate, any tax deficiency, related interest, and applicable penalties due under this chapter, the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., or the Arkansas Tax Procedure Act, § 26-18-101 et seq., may be assessed against the nonprofit organization but may not be assessed against a third party that has relied in good faith on the exemption certificate prior to its revocation.

(2) If the director revokes the exemption certificate, any tax deficiency, related interest, and applicable penalties assessed against the nonprofit organization shall also include any tax deficiency, related interest, and applicable penalties assessed on purchases made by the nonprofit organization's contractors and agents for the benefit of the nonprofit organization in reliance on the exemption certificate.

(3)(A) Any assessment by the director under subdivision (e)(1) or subdivision (e)(2) of this section shall be made in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(B) However, the time period for the director to make the assessment is extended to whichever of the following occurs first:

(i) Three (3) years from the date the nonprofit organization files the statement under subdivision (c)(2) of this section; or

(ii) July 1, 2016.

(4) The nonprofit organization may contest any assessment or other determination by the director in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq.

26-52-441. Natural gas and electricity used in the manufacturing of tires.

(a) The gross receipts or gross proceeds derived from the sale of natural gas and electricity used in the manufacturing of tires in this state are exempt from the:

(1) Gross receipts tax levied by this chapter; and

(2) Compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) As used in this section:

(1) "Manufacturing of tires" means the manufacturing of new motor vehicle tires and does not include the retreading of tires; and

(2) "Motor vehicle" means any vehicle required to be licensed for highway use under Arkansas law.

(c) The natural gas and electricity subject to the exemption in this section shall be separately metered from the natural gas and electricity used for any other purpose by the manufacturer or as otherwise established in the rules issued under subsection (d) of this section.

(d) The Director of the Department of Finance and Administration shall promulgate rules for the proper administration of this section.

History. Acts 2007, No. 548, § 1.

§ 2, provided: "Section 1 of this act will become effective on January 1, 2008."

Effective Dates. Acts 2007, No. 548,

SUBCHAPTER 5 — RETURNS AND REMITTANCE OF TAX

SECTION.

26-52-501. Preparation of returns — Payment of tax.

26-52-502. Tax return on basis of cash actually received.

26-52-503. Discount for prompt payment.

26-52-504. [Repealed.]

26-52-505. Sales of aircraft.

26-52-506. Taxable labor performed for retailer — Collection of tax.

26-52-507. [Repealed.]

26-52-508. Collection of tax by sellers or admissions collectors.

26-52-509. Direct payment of tax by consumer or user generally.

26-52-510. Direct payment of tax by consumer-user — New and used motor vehicles, trailers, or semitrailers.

26-52-511. Prepaid funeral contracts.

26-52-512. Tax payments by retailers.

SECTION.

26-52-513. Sales of motor-driven and all-terrain vehicles.

26-52-514. Determining total consideration for sale of vehicle — Alternative method.

26-52-515. Refund of sales tax on vehicles returned as defective.

26-52-516. Refunds for construction of employer-operated child care facilities.

26-52-517. Exemption certificates.

26-52-518. Special events.

26-52-519. Credit voucher for sales tax on motor vehicles destroyed by catastrophic events.

26-52-520. Communication equipment for commercial trucks.

26-52-521. Sourcing of sales.

26-52-522. Direct mail sourcing.

26-52-523. Credit or rebate on local sales and use tax.

Cross References. Date of mailing of tax return or tax claim as date of delivery, § 26-18-105.

Preambles. Acts 1973, No. 516 contained a preamble which read: "Whereas, the athletic departments of the various institutions of higher learning in the State of Arkansas, both State-supported and private, athletic and/or interscholastic activities of public and private elementary and secondary schools, depend largely if not entirely on funds derived from admissions to athletic events and do not participate in tax revenues; and

"Whereas, it is in the best interest of higher education and public and private elementary and secondary schools and in the overall improvement of interest and participation in athletic events at colleges and universities and public and private elementary and secondary schools throughout the State that sales taxes paid by such institutions of higher learning and public and private elementary and secondary schools on admissions tickets to athletic events be refunded to the particular institution collecting such taxes, or exempted from the provisions of the Gross Receipts Tax ... "

Acts 1975, No. 282 contained a preamble which read: "Whereas, Section 3 of Act 214 of 1971 levied a sales tax of three per centum upon certain types of labor, to wit, service of or alteration, addition, cleaning, refinishing, replacement and repair of motor vehicles, aircraft, farm machinery and implements, motors of all kinds, tires and batteries, boats, electrical appliances and devices, furniture, rugs, upholstery, household appliances, television and radio, jewelry, watches, machinery of all kinds, bicycles, office machines and equipment, shoes, tin and sheetmetal, mechanical tools and shop equipment, but excluding coin operated car washes; and

"Whereas, this Act has created confusion concerning the propriety or impropriety of one collecting Sales Tax when performing taxable labor for another person who holds a Retailer's Permit, who in turn will collect Sales Tax on the labor when the labor is charged to the ultimate consumer ... "

Effective Dates. Acts 1941, No. 386, § 21: July 1, 1941.

Acts 1945, No. 64, § 3: approved Feb. 21, 1945. Emergency clause provided: "It being considered necessary by the Legis-

lature to more effectively collect Sales Tax on new and used cars as provided in this Act and to expedite such collection, that this Act should be in effect as soon as possible and it thereby being necessary for the public peace, health and protection of the State an emergency is hereby declared and this Act shall be in full force and effect immediately upon and after its passage."

Acts 1957, No. 19, § 6: Feb. 7, 1957. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas (1) that inflationary prices are having the effect of curtailing the activities of certain necessary agencies of the State Government, including the State Hospital and other eleemosynary institutions, and the University of Arkansas and the other state-supported institutions of higher learning, the Public School System, the Public Welfare Program, and others; (2) that a minimum program of operation of the said state agencies and activities requires a large amount of state funds in excess of the amounts estimated to be available under existing revenue laws; (3) that to fail to provide additional funds will have the effect of further curtailing the activities of said agencies and programs to the great detriment to all of the people of this State; and (4) that only the provisions of this act will provide funds in amounts sufficient to alleviate the aforementioned conditions. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1965, No. 146, §§ 5, 7: Apr. 1, 1965. Emergency clause provided: "It has been found that increased population and increased cost of operating have placed heavy demands on funds available for the operation of government and it is necessary to supplement said funds so that proper functions of government may be performed. Therefore, in order to provide supplemental funds for the operation of government, and this Act being necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval." Approved Mar. 9, 1965.

Acts 1975, No. 800, § 3: Apr. 4, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that a more efficient collection of gross receipts taxes by certain consumer users could be accomplished by instituting a system whereby the consumer user would pay the gross receipts taxes direct to the Revenue Services Division of the Department of Finance and Administration, and that the immediate passage of this Act is necessary to enable the Revenue Services Division of the Department of Finance and Administration to promulgate appropriate rules and regulations for entering into agreements for direct payment of gross receipts taxes to the State of Arkansas by the user. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 401, § 50: Jan. 1, 1980.

Acts 1979, No. 915, § 6: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly that there is some doubt regarding the correct dates for the reporting and payment of the Arkansas gross receipts and compensating use taxes; that there is also some confusion as to whether the Gross Receipts Tax should be computed on the basis of the total combined gross receipts or gross proceeds derived by the taxpayer from all taxable sales during the month or upon the gross receipts or gross proceeds derived from each separate sale, and not upon any figure for gross receipts tax collected that may appear on taxpayer's books of account, and that this Act is designed to clarify this matter by specifically providing that the tax is computed upon the total receipts for the month from all taxable sales and not upon the gross receipts derived from each sale; nor upon any figure for gross receipts tax collected that may appear on taxpayer's books of account; that the effectiveness of this Act on July 1, 1979, is essential to the efficient collection of revenues for the State's operations and that in the event of an extension of the regular session, delay in effective date of this Act beyond July 1, 1979, could work irreparable harm upon the proper collection of essential revenues for the State's operations. Therefore, an

emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1979."

Acts 1985, No. 691, § 4: effective for tax years on and after July 1, 1985.

Acts 1987 (1st Ex. Sess.), No. 10, § 2: Jan. 1, 1988. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the State is in serious danger of losing revenues which are necessary to provide adequate funding for schools and other essential services required by the citizens of this State and that the provisions of this Act are necessary to avoid a substantial reduction in State revenues. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after January 1, 1988."

Acts 1989, No. 395, § 6: Mar. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the provisions of Arkansas Code of 1987 Annotated § 26-53-101 et seq. do not specifically provide for allowance to be given to persons for similar taxes paid in other states; that the proper and effective administration of the compensating (use) tax will be greatly enhanced by the provisions of a reciprocal tax credit given by the State of Arkansas to purchasers who have previously paid a compensating tax in another state, provided that such other state offers the same tax credit to Arkansas purchasers for tangible personal property brought into the other state; that this act is immediately necessary in order to eliminate the possibility that Arkansas taxpayers will be subject to undue multiple taxation by other states due to the failure of the states' taxing authorities to equate the Arkansas Gross Receipts Tax to sales tax for purposes of allowing a reciprocal sales tax credit; that this act is also necessary to lessen the administrative burdens on taxpayers whose monthly gross receipts tax liability is relatively small in amount. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and welfare, shall be in

full force and effect from and after its passage and approval."

Acts 1989 (3rd Ex. Sess.), No. 9, § 5: Nov. 3, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that this State is losing sales and use tax revenues on new and used motor vehicles purchased by Arkansas residents from sellers in other states and that these revenues are essential to fund public education and other necessary services provided by State government and the loss of these funds if causing irreparable harm to this State. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 3, § 14: May 1, 1991. Emergency clause provided: "It is hereby found and determined that the State of Arkansas is lacking adequate funds to provide for the education of its citizens and for other essential services: that increased funds must be raised to adequately provide for those needs; that certain persons are assisting taxpayers in evading or defeating the payment or collection of lawfully imposed state taxes depriving the state of needed revenues and that this act is designed to provide the necessary revenues to the state sufficient to meet these needs. Therefore, an emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective on and after May 1, 1991."

Acts 1991, No. 688, § 10: Mar. 21, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that some taxpayers are not properly completing and timely filing tax returns; that these failures create an administrative burden upon the Department of Finance and Administration; and that this act is designed to impose a fifty dollar (\$50) penalty for failure to timely file returns, even if no tax is due, or if returns are not properly completed. Therefore, an emergency is hereby declared to exist and this act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1126, § 5: May 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that Act 3 of 1991, should be amended to provide that used manufactured homes valued at less than ten thousand dollars (\$10,000) should not be subject to the gross receipts tax; that this act shall amend Act 3 to that extent; that Act 3 of 1991, goes into effect on May 1, 1991, and therefore this act should go into effect at the same time. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after May 1, 1991."

Acts 1992 (2nd Ex. Sess.), No. 6, § 6: Dec. 18, 1992. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious need of additional revenues which are necessary to provide adequate funding for essential services required by the citizens of this State and that the provisions of this act are necessary to increase State revenues. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 268, § 11: Feb. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that current law imposes a 10% penalty on late payment of sales or use tax on motor vehicles and trailers; that current law disallows the isolated sales exemption to a purchase of a motor vehicle or trailer; that each of these provisions are in need of clarification to ensure the original legislative intent is fulfilled; and that Sections 6 and 7 of this act should be effective immediately to prevent possible confusion among the taxpayers of this state. Therefore, an emergency is hereby declared to exist and Sections 6 and 7 of this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect immediately upon its passage and approval."

Acts 1995, No. 358, § 6: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that ven-

dors in the ordinary course of business have relied to their detriment by accepting resale certificates from purchasers in good faith, only to later incur tax liability if the property purchased was not resold by the purchaser; that the purchaser in most cases will be in the best position to determine whether the resale exemption is valid but current law does not permit recourse against the purchaser if the property purchased is not in fact resold; and that the practicalities of business require that vendors be permitted to relieve themselves of tax liability upon good faith acceptance of a resale certificate and this act is designed to afford such relief. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1995, No. 835, § 9: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas law is unclear as it applies to the taxation of contractors and subcontractors who construct and repair buildings and other improvements and structures affixed to real estate; that Arkansas gross receipts and use tax laws which impose tax on certain services to motors, electrical appliances and devices, household appliances, and machinery were never intended by the General Assembly to apply to nonmechanical, passive or manually operated building systems or components; that none of the charges made by a contractor for labor or materials used in performing such non-taxable services are properly subject to tax; that contractors and subcontractors are suffering substantial losses on audits after making best efforts to comply with existing law; and that the gross receipts and use tax laws need to be clarified to specifically exclude certain services to buildings and other improvements or structures affixed to real estate from tax. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995."

Acts 1995, No. 850, § 8: effective for taxable years beginning Jan. 1, 1995.

Acts 1995, No. 850, § 12: Mar. 31, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious need to provide for the health, welfare and education of the State's children by encouraging child care facilities to offer an 'appropriate early childhood program' and this Act is designed to meet that need by providing tax incentives to encourage construction of these facilities. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 391, § 5: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that sellers have relied to their detriment in accepting sales tax exemption claims by purchasers in good faith, only later to incur tax liability if the purchaser was not entitled to an exemption; that the purchaser is in the best position to determine whether the exemption claim is valid but current law does not permit recourse against the purchaser if the sale is not tax exempt; that sellers be allowed to relieve themselves of tax liability upon good faith acceptance of a claim that a sale is tax exempt; and that this act will provide this relief. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

Acts 1997, No. 635, § 2: Jan. 1, 1998.

Acts 1997, No. 1192, § 6: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly of the State of Arkansas that the sales tax laws regarding manufactured homes are confused and need clarification to prevent inequities and possible lawsuits over their misapplication; that the laws restrict somewhat the capacity of persons to know what is taxed and when; and that it is immediately necessary for the sales tax laws regarding manufactured homes to become more comparable with laws on all types and forms of housing. Therefore, in order to make the laws more compatible, an emergency is hereby declared to exist, and this act being necessary for the immediate

preservation of the public peace, health, and safety, shall become effective on and after July 1, 1997.”

Acts 1997, No. 1232, § 5: Jan. 1, 1998.

Acts 1997, No. 1359, § 41: July 1, 1997. Emergency clause provided: “It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997.”

Acts 1999, No. 598, § 2: Jan. 1, 2000.

Acts 2003, No. 664, § 5: Aug. 1, 2003. Effective date clause provided: “This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days.”

Acts 2003, No. 665, § 3: Jan. 1, 2004.

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states impos-

ing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state’s proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Acts 2007, No. 154, § 7: Mar. 1, 2007. Effective date clause provided: “Sections 1–6 of this act shall be effective on the first day of the calendar month following the effective date of this act.”

Acts 2007, No. 154, § 8: Feb. 28, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the tax for free admission defeats the primary intent of a ‘free’ admission; that the recordkeeping for the seller or person furnishing the free admission is cost prohibitive and unnecessarily burdensome to the philanthro-

pist and that the tax does not yield significant revenues to the state to justify the expense of the recordkeeping and submission of the tax; and that this act is immediately necessary for the state to enjoy the economic benefit from persons and entities giving free tickets to tourist attractions during the springtime. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and

safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 179, § 2: Jan. 1, 2008.

Acts 2007, No. 181, § 45: Jan. 1, 2008.

Acts 2007, No. 860, § 7: Jan. 1, 2008.

CASE NOTES

Cited: *Acxiom Corp. v. Leathers*, 331 Ark. 205, 961 S.W.2d 735 (1998).

26-52-501. Preparation of returns — Payment of tax.

(a)(1) The tax levied under this chapter shall be due and payable on the first day of each month, except as provided in this subchapter, by any person liable for the payment of any tax due under this chapter.

(2) When a taxpayer becomes liable to file a report with the Director of the Department of Finance and Administration, the taxpayer must continue to file the report, even though no tax is due, until such time as the taxpayer notifies the director, in writing, that the taxpayer is no longer liable for the report.

(b)(1) For the purpose of ascertaining the amount of tax payable under this chapter, it shall be the duty of all taxpayers on or before the twentieth day of each month to deliver to the director, upon forms prescribed and furnished by the director, returns showing the total tax due derived from all taxable sales during the preceding calendar month.

(2) The returns shall show such further information as the director may require to enable the director to compute correctly and collect the tax levied.

(3) Whether an individual, corporation, partnership, limited liability company, or other entity, every taxpayer shall file a single report combining all taxes due derived from sales made from all Arkansas locations of the taxpayer's business which are registered and permitted with the director under the same federal employer's identification number or social security number.

(c) In addition to the information required on returns, the director may request and the taxpayer must furnish any information deemed necessary for a correct computation of the tax levied.

(d) The tax shall be computed by multiplying the tax rate by the amount of the total combined gross receipts or gross proceeds derived from all taxable sales during the preceding month without regard to the amount that may be allocated to gross receipts tax on the taxpayer's books of account.

(e) The taxpayer shall compute and remit to the director the required tax due for the preceding calendar month, with the remittance of the tax to accompany the returns required in this subchapter.

(f) The return and remittances by the taxpayer as required in subsections (a)-(e) of this section shall not be construed to constitute an assessment of the tax.

(g)(1) If not paid on or before the twentieth of that month, the tax shall be delinquent from that date.

(2) However, no penalty for delinquency shall be assessed if payment is made on or before the first day of the month next following.

(h) When the average amount of tax for which the taxpayer is liable for the previous fiscal year beginning on July 1 and ending on June 30 does not exceed one hundred dollars (\$100) per month, the director may notify the taxpayer that a quarterly report and remittance in lieu of a monthly report may be made on or before July 20, October 20, January 20, and April 20 of each year for the preceding three-month period.

(i) When the average amount of tax for which the taxpayer is liable for the previous fiscal year beginning on July 1 and ending on June 30 does not exceed twenty-five dollars (\$25.00) per month, the director may notify the taxpayer that a yearly report and remittance in lieu of a monthly report may be made on or before January 20 of each year for the preceding twelve-month period.

(j) The director may establish by regulation separate requirements for filing reports and returns and paying the tax levied under this chapter for taxpayers whose principal line of business does not include the retail selling of tangible personal property or performing taxable services.

History. Acts 1941, No. 386, § 5; 1979, No. 915, § 1; A.S.A. 1947, § 84-1906; Acts 1989, No. 395, § 2; 1991, No. 688, § 2; 1995, No. 301, § 2; 1995, No. 835, § 5; 2003, No. 664, §§ 1, 2; 2007, No. 181, § 24.

Amendments. The 2003 amendment, in (h) and (i), substituted “average” for “total” and “previous fiscal ... June 30” for “month of January 1990 or any month thereafter” and inserted “per month, the director may notify the taxpayer that”; and inserted “in lieu of a monthly report” in (i).

The 2007 amendment rewrote (b)(1) and (b)(3).

Effective Dates. Acts 2003, No. 664, § 5; Aug. 1, 2003. Effective date clause provided: “This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days.”

Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

CASE NOTES

Taxpayer's Defense to Claims.

Where taxpayer's defense to state's claim for unpaid sales taxes was three year statute of limitations and he did not

claim “no tax due,” venue of his suit to enjoin levy of execution was in the Pulaski Chancery Court, and not in the county in which the state had placed a certificate of

indebtedness of record against him. *Scurlock v. Yarbrough*, 224 Ark. 113, 271 S.W.2d 916 (1954).

In proceeding to enjoin levy of execution for unpaid sales taxes where taxpayer claimed three-year statute of limitations barred action, court held that where record did not disclose what particular months the alleged unpaid taxes were charged against in situation where some of the months of the year in question might be barred and some months not, the entire total for the year could have been

incurred in months not barred, and the plea of the statute of limitations as to that entire year was without merit. *Scurlock v. Yarbrough*, 224 Ark. 113, 271 S.W.2d 916 (1954).

Cited: *Thompson v. Chadwick*, 221 Ark. 720, 255 S.W.2d 687 (1953); *Ragland v. K-Mart Corp.*, 274 Ark. 297, 624 S.W.2d 430 (1981); *Farmers Coop. v. State*, 282 Ark. 434, 669 S.W.2d 440 (1984); *Weiss v. Central Flying Serv., Inc.*, 326 Ark. 685, 934 S.W.2d 211 (1996).

26-52-502. Tax return on basis of cash actually received.

(a) Any person taxable under this chapter doing business wholly or partly on a credit basis may make application to the Director of the Department of Finance and Administration for permission to prepare his or her returns on the basis of cash actually received.

(b) The application shall be granted by the director under such rules and regulations as the director may prescribe.

(c) Any person making the application shall be taxable on all moneys collected during the taxable period.

History. Acts 1941, No. 386, § 8; A.S.A. 1947, § 84-1909.

CASE NOTES

ANALYSIS

In General.
Credit Basis.

In General.

If from time to time audits of corporation's business were made by state agents and in consequence of such audits corporation made an assessment of items claimed to be interstate transactions, but did not pay tax because of state's ruling that it was not to be included in the declaration, then the tax for disclosed and reported periods would not be assessable.

Hollis & Co. v. McCarroll, 200 Ark. 523, 140 S.W.2d 420 (1940) (decision under prior law).

Credit Basis.

Acts 1935, No. 233 was not discriminatory because it provided that any person doing a credit business might apply for permission to prepare returns on basis of cash actually received and that any person making such an application should be taxable on all moneys collected, regardless of the date of sale. *Wiseman v. Phillips*, 191 Ark. 63, 84 S.W.2d 91 (1935) (decision under prior law).

26-52-503. Discount for prompt payment.

(a) At the time of transmitting the returns required under this chapter to the Director of the Department of Finance and Administration, the taxpayer shall remit with the returns to the director ninety-eight percent (98%) of the state tax due under the applicable provisions of this chapter and ninety-eight percent (98%) of the city and county gross receipts taxes collected by the director.

(b) Failure of the taxpayer to remit the tax on or before the twentieth day of the applicable month shall cause the taxpayer to forfeit his or her claim to the discount, and the taxpayer must remit to the director one hundred percent (100%) of the amount of tax plus any penalty and interest due.

(c)(1)(A) For tax payments made on or after February 1, 1993, the discount for prompt payment of state tax shall not exceed one thousand dollars (\$1,000) per month for a taxpayer filing monthly gross receipts tax reports.

(B) A taxpayer filing a tax report on a quarterly, annual, or occasional basis shall be entitled to the discount for state tax, which shall not exceed one thousand dollars (\$1,000) for each month included in the tax report.

(2)(A) The aggregate state tax discount available to a taxpayer who operates more than one (1) permitted business location within this state and who does not file a consolidated monthly gross receipts tax report for all locations shall not exceed one thousand dollars (\$1,000) per month.

(B) In the case of a corporate taxpayer, parent corporation, that holds fifty percent (50%) or more of the outstanding shares of one (1) or more corporations, subsidiaries, that are subject to the tax imposed by this chapter, the aggregate state tax discount available to the parent corporation and all subsidiaries shall not exceed one thousand dollars (\$1,000) per month.

(C) There shall be no limitation on the discount for prompt payment of city and county gross receipts taxes collected by the director.

History. Acts 1941, No. 386, § 14; 1979, No. 915, § 4; A.S.A. 1947, § 84-1915; Acts 1992 (2nd Ex. Sess.), No. 6, § 1; 2003, No. 747, §§ 2, 3.

Amendments. The 2003 amendment, in (a), inserted “state” preceding “tax” and

added “and ninety-eight percent ... director”; in (c)(1), inserted “of state tax” and “for state tax”; in (c)(2)(a) and (c)(2)(B) inserted “state tax” following “aggregate”; added (c)(2)(C); and deleted former (c)(3).

CASE NOTES

Cited: *Farmers Coop. v. State*, 282 Ark. 434, 669 S.W.2d 440 (1984).

26-52-504. [Repealed.]

Publisher's Notes. This section, concerning sale of manufactured homes or mobile homes, was repealed by Acts 2005, No. 2254, § 2. The section derived from Acts 1965, No. 146, §§ 1-4; 1985, No. 691,

§ 1; A.S.A. 1947, §§ 84-1933 — 84-1936; Acts 1987, No. 508, § 1; 1991, No. 3, § 4; 1991, No. 1126, § 1; 1995, No. 437, § 2; 1997, No. 1192, § 1.

26-52-505. Sales of aircraft.

(a) Every person selling new or used aircraft in this state, whether from an established business, under a dealership, as a flying service, or as a private individual, shall obtain and hold a permit as provided in § 26-52-202 and shall make a monthly report and remittance to the Director of the Department of Finance and Administration as provided in this chapter, together with copies of invoices, sales tickets, or bills of sale reflecting the date of all sales of aircraft, the purchaser's name and address, the make, year, model, serial number, and gross sales price of each aircraft, and the amount of tax collected from the purchaser.

(b) When a used aircraft is taken in trade as a credit or part payment on the sale of a new or used aircraft, the tax levied by this chapter and all other gross receipts taxes levied by the state shall be paid on the net difference between the total consideration for the new or used aircraft sold and the credit for the used aircraft taken in trade. However, if the total consideration for the sale of the new or used aircraft is less than two thousand dollars (\$2,000), no tax shall be due.

(c) However, the gross receipts or gross proceeds derived from the sale of new aircraft manufactured or substantially completed within the State of Arkansas shall not be subject to the gross receipts tax when sold by the manufacturer or substantial completer to a purchaser for use exclusively outside this state, notwithstanding the fact that possession may be taken in the state for the sole purpose of removing the aircraft from the state under its own power.

History. Acts 1959, No. 270, § 1; 1981, No. 377, § 1; A.S.A. 1947, § 84-1929; Acts 1991, No. 3, § 5.

A.C.R.C. Notes. Acts 1991, No. 3, § 8, provides, in part, that the Director of the Department of Finance and Administra-

tion is authorized to adopt an alternative method for determining the total consideration for the sale of new or used aircraft under this section. See § 26-52-514 concerning such alternative method.

26-52-506. Taxable labor performed for retailer — Collection of tax.

(a) One performing taxable labor for another person who holds a retailer's permit shall not be required to collect and remit sales tax on the labor when the labor is to be charged to, and the sales tax collected from, the ultimate consumer.

(b) The intent of this section is that labor, under the aforementioned circumstance, be given wholesale status, and that the sales tax on labor be collected only one (1) time by the retailer who collects it from his or her customer.

History. Acts 1975, No. 282, §§ 1, 2; A.S.A. 1947, §§ 84-1903.2, 84-1903.3; Acts 2007, No. 361, § 1.

Amendments. The 2007 amendment,

in (a), deleted "under § 26-52-301(3)" following "labor" and made minor punctuation changes.

26-52-507. [Repealed.]

Publisher's Notes. This section, concerning gross receipts tax due by florists transmitting orders, was repealed by Acts

2007, No. 181, § 25. The section derived from Acts 1959, No. 116, § 1; A.S.A. 1947, § 84-1908.1.

26-52-508. Collection of tax by sellers or admissions collectors.

(a) The tax levied by this chapter shall be paid to the Director of the Department of Finance and Administration by:

- (1) The seller of tangible personal property;
- (2) The seller or collector of admissions to places of amusement, recreational, or athletic events;
- (3) The seller of privileges of access to or the use of amusement, entertainment, athletic, or recreational facilities; and
- (4) Any other person furnishing any service subject to the provisions of this chapter.

(b) The taxes, penalty, and interest shall at all times constitute a prior, superior, and paramount claim as against the claims of unsecured creditors.

(c) The seller or person furnishing the taxable service shall collect the tax levied from the purchaser.

(d)(1) No tax is due on admission to a place of amusement, entertainment, recreation, or an athletic event for which no consideration is paid.

(2) No tax is due on the access to or the use of an amusement, entertainment, athletic, or recreational facility for which no consideration is paid.

History. Acts 1941, No. 386, § 7; A.S.A. 1947, § 84-1908; Acts 2007, No. 154, §§ 5, 6; 2007, No. 181, § 26.

Amendments. The 2007 amendment by No. 154 rewrote (d).

The 2007 amendment by No. 181 deleted former (d).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10)

states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially

in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section

of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 154, § 7, provided: "Effective Date. Sections 1-6 of this act shall be effective on the first day of the calendar month following the effective date of this act."

Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

CASE NOTES

ANALYSIS

Excess Collection.
Liability for Tax.

Excess Collection.

Doctrine of unjust enrichment did not apply where out-of-state corporation retained out of purchase price from Arkansas customers two (now three) percent of amount of sale but agreed to return the two (now three) percent to customers if corporation was not liable for gross receipts tax. *Thompson v. Rhodes-Jennings Furn. Co.*, 223 Ark. 705, 268 S.W.2d 376 (1954), cert. denied, 348 U.S. 872, 75 S. Ct. 108, 99 L. Ed. 686 (1954).

A discount retailer that collected sales tax in accordance with a regulation promulgated pursuant to this section, and as a result held funds in excess of the three percent authorized by § 26-52-301, was entitled to retain the excess, since all statutory requirements were met, the consumers who paid the tax could not be identified, and a refund of the overcollection was not possible. *Ragland v. K-Mart Corp.*, 274 Ark. 297, 624 S.W.2d 430 (1981).

Liability for Tax.

Retailer was liable for the tax if he failed to collect it. *Arkansas Power & Light Co. v. Roth*, 193 Ark. 1015, 104 S.W.2d 207 (1937) (decision under prior law).

Extension of credit by power company did not operate to deprive it of the power of, nor relieve it from the duty of, making collection of tax, nor to relieve consumer from liability to pay tax. *Arkansas Power & Light Co. v. Roth*, 193 Ark. 1015, 104 S.W.2d 207 (1937) (decision under prior law).

Consumer of electricity was liable to power company for tax on sale of electricity made to him even though he had not expressly contracted to pay such tax, since the duty was imposed by law. *Arkansas Power & Light Co. v. Roth*, 193 Ark. 1015, 104 S.W.2d 207 (1937) (decision under prior law).

Cited: *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110, 74 S. Ct. 403, 98 L. Ed. 546 (1954); *Parker v. Kern-Limerick, Inc.*, 223 Ark. 464, 266 S.W.2d 298 (1954); *Ragland v. Miller Trane Serv. Agency, Inc.*, 274 Ark. 227, 623 S.W.2d 520 (1981).

26-52-509. Direct payment of tax by consumer or user generally.

(a) In the exercise of his or her discretion, the Director of the Department of Finance and Administration by agreement with any consumer or user may permit a consumer or user under such agreement to accrue and remit gross receipts taxes directly to the Department of Finance and Administration, instead of such taxes being collected and paid by the seller as provided in § 26-52-508.

(b) The agreements may be revoked at any time by the director whenever the director determines that the revocation thereof should be in the best interests of collection of gross receipts taxes.

(c) A consumer or user being permitted to report gross receipts taxes directly to the department shall not be entitled to any discount for any collection and shall be subject to all provisions of this chapter in the same manner as the taxpayer liable to remit taxes under this chapter.

(d) This section is supplemental to this chapter.

History. Acts 1975, No. 800, §§ 1, 2; 1979, No. 401, § 47; A.S.A. 1947, §§ 84-1945, 84-1945n.

26-52-510. Direct payment of tax by consumer-user — New and used motor vehicles, trailers, or semitrailers.

(a)(1)(A)(i) The tax levied by this chapter and all other gross receipts taxes levied by the state in respect to the sale of new or used motor vehicles, trailers, or semitrailers required to be licensed in this state shall be paid by the consumer to the Director of the Department of Finance and Administration instead of being collected by the dealer or seller.

(ii) It is the mandatory duty of the director to require the payment of the tax at the time of registration before issuing licenses for new or used motor vehicles or trailers.

(B)(i) The tax shall apply regardless of whether the motor vehicle, trailer, or semitrailer is sold by a vehicle dealer, or an individual, corporation, or partnership not licensed as a vehicle dealer.

(ii) The exemption provided for in § 26-52-401(17) for isolated sales shall not apply to the sale of motor vehicles, trailers, or semitrailers.

(2)(A) The tax levied by this chapter and all other gross receipts taxes levied by the state in respect to the sale of new or used motor vehicles, trailers, or semitrailers required to be licensed in this state shall be paid by the consumer on or before the time for registration as prescribed by § 27-14-903(a).

(B)(i) Failure to pay the tax when due shall result in an assessment of a penalty equal to ten percent (10%) of the amount of tax due.

(ii) The penalty must be paid to the director along with the tax before the vehicle license will be issued.

(b)(1)(A) Except as provided in this section, when a used motor vehicle, trailer, or semitrailer is taken in trade as a credit or part payment on the sale of a new or used motor vehicle, trailer, or semitrailer, the tax levied by this chapter and all other gross receipts taxes levied by the state shall be paid on the net difference between the total consideration for the new or used vehicle, trailer, or semitrailer sold and the credit for the used vehicle, trailer, or semitrailer taken in trade.

(B) However, if the total consideration for the sale of the new or used motor vehicle, trailer, or semitrailer is less than two thousand five hundred dollars (\$2,500), no tax shall be due.

(C)(i) When a used motor vehicle, trailer, or semitrailer is sold by a consumer, rather than traded-in as a credit or part payment on the sale of a new or used motor vehicle, trailer, or semitrailer, and the consumer subsequently purchases a new or used vehicle, trailer, or semitrailer of greater value within forty-five (45) days of the sale, the tax levied by this chapter and all other gross receipts taxes levied by the state shall be paid on the net difference between the total consideration for the new or used vehicle, trailer, or semitrailer purchased subsequently and the amount received from the sale of the used vehicle, trailer, or semitrailer sold in lieu of a trade-in.

(ii)(a) Upon registration of the new or used motor vehicle, a consumer claiming the deduction provided by subdivision (b)(1)(C)(i) of this section shall provide a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle.

(b) A copy of the bill of sale shall be deposited with the revenue office at the time of registration of the new or used motor vehicle.

(c) The deduction provided by this section shall not be allowed unless the taxpayer claiming the deduction provides a copy of a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle.

(iii) If the taxpayer claiming the deduction provided in this section fails to provide a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle, tax shall be due on the total consideration paid for the new or used vehicle, trailer, or semitrailer without any deduction for the value of the item sold.

(2)(A)(i) When a motor vehicle dealer removes a vehicle from its inventory and the vehicle is used by the dealership as a service vehicle, the dealer shall register the vehicle, obtain a certificate of title, and pay sales tax on the listed retail price of the new vehicle.

(ii)(a) When the motor vehicle dealer returns the service vehicle to inventory as a used vehicle and replaces it with a new vehicle for dealership use as a service vehicle, the dealer shall pay sales tax on the difference between the listed retail price of the new service vehicle to be used by the dealership and the value of the used service vehicle being returned to inventory.

(b) The value of the used service vehicle shall be the highest listed wholesale price reflected in the most current edition of the National Automotive Dealers Association's Official Used Car Guide.

(B)(i) As used in this subsection, "service vehicle" means a motor vehicle driven exclusively by an employee of the dealership and used either to transport dealership customers or dealership parts and equipment.

(ii) "Service vehicle" does not include motor vehicles which are rented by the dealership, used as demonstration vehicles, used by

dealership employees for personal use, or used to haul or pull other vehicles.

(c) All parts and accessories purchased by motor vehicle sellers for resale or used by them for the reconditioning or rebuilding of used motor vehicles intended for resale are exempt from gross receipts tax, provided that the motor vehicle seller meets the requirements of § 26-52-401(12)(A) and applicable regulations promulgated by the director.

(d) Nothing in this section shall be construed to repeal any exemption from this chapter.

(e)(1) No credit shall be allowed for sales or use taxes paid to another state with respect to the purchase of motor vehicles, trailers, or semitrailers which were first registered by the purchaser in Arkansas.

(2) This subsection shall apply to all motor vehicles, trailers, or semitrailers purchased on or after November 3, 1989.

(f)(1)(A) Any motor vehicle dealer licensed pursuant to § 27-14-601(a)(6) who has purchased a used motor vehicle upon payment of all applicable registration and title fees may register the vehicle for the sole purpose of obtaining a certificate of title to the vehicle without payment of gross receipts tax, except as provided in subdivision (f)(1)(B) of this section.

(B)(i) The sale of a motor vehicle from the original franchise dealer to any other dealer, person, corporation, or other entity other than a franchise dealer of the same make of vehicle and which sale is reflected on the statement of origin shall be subject to gross receipts tax.

(ii) The vehicle shall be considered a used motor vehicle which shall be registered and titled, and tax shall be paid at the time of registration.

(iii) The provisions of subdivision (f)(1)(A) of this section shall not apply in those instances.

(2) No license plate shall be provided with the registration, and the used vehicle titled by a dealer under this subsection may not be operated on the public highways unless there is displayed on the used vehicle a dealer's license plate issued under the provisions of § 27-14-601(a)(6)(B)(ii).

(g)(1)(A) For purposes of this section, the total consideration for a used motor vehicle shall be presumed to be the greater of the actual sales price as provided on the bill of sale, invoice or financing agreement, or the average loan value price of the vehicle as listed in the most current edition of a publication which is generally accepted by the industry as providing an accurate valuation of used vehicles.

(B) If the published loan value exceeds the invoiced price, then the taxpayer must establish to the director's satisfaction that the price reflected on the invoice or other document is true and correct.

(C) If the director determines that the invoiced price is not the actual selling price of the vehicle, then the total consideration will be deemed to be the published loan value.

(2)(A) For purposes of this section, the total consideration for a new or used trailer or semitrailer shall be the actual sales price as provided on a bill of sale, invoice, or financing agreement.

(B) The director may require additional information to conclusively establish the true selling price of the trailer.

History. Acts 1941, No. 386, § 3; 1945, No. 64, § 1; 1957, No. 19, §§ 1, 4; 1959, No. 260, § 1; A.S.A. 1947, §§ 84-1903, 84-3108n; Acts 1989 (3rd Ex. Sess.), No. 9, § 1; 1991, No. 3, § 6; 1993, No. 285, § 8; 1993, No. 297, § 8; 1995, No. 268, § 6; 1995, No. 390, § 1; 1995, No. 437, § 1; 1995, No. 1013, § 1; 1997, No. 1232, §§ 1, 2; 2001, No. 1047, § 1; 2001, No. 1834, § 1.

A.C.R.C. Notes. Acts 1991, No. 3, § 8, provides, in part, that the Director of the Department of Finance and Administration is authorized to adopt an alternative

method for determining the total consideration for the sale of new or used motor vehicles, trailers, or semitrailers under this section. See § 26-52-514 concerning such alternative method.

Publisher's Notes. Acts 1995, No. 1013 became law without the Governor's signature.

Cross References. Refund of sales tax on vehicles returned as defective, § 26-52-515.

Effective Dates. Acts 1997, No. 1232, § 5 provided that the provisions of this act shall become effective on January 1, 1998.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Taxation, 8 U. Ark. Little Rock L.J. 601.

U. Ark. Little Rock L. Rev. Survey of

Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

CASE NOTES

ANALYSIS

In General.
Automobiles.
Legislative Intent.
Trailers.

In General.

Since this section provided who is to pay the tax, a car dealer is not required to tell every purchaser who would pay the tax or have the contract subjected to rescission. *Lowell Perkins Agency, Inc. v. Jacobs*, 250 Ark. 952, 469 S.W.2d 89 (1971).

Trial court did not err in denying car manufacturer a refund or deduction of the pro rata portion of gross receipts tax related to bad debts arising out of the sale and financing of motor vehicles as the car manufacturer was not a "taxpayer" for the purposes of the Arkansas Bad Debt Statute, § 26-52-101 et seq.; for the purposes of the motor vehicle gross receipts tax, the person liable to remit the tax was the consumer. *DaimlerChrysler Servs. N. Am., LLC v. Weiss*, 360 Ark. 188, 200 S.W.3d 405 (2004).

Trial court erred in finding that a corporation was a "taxpayer" for the purposes of § 26-52-309, commonly known as the Bad Debt Statute, and in granting a refund or deduction of the pro rata portion of gross receipts tax related to bad debts arising out of the sale and financing of motor vehicles in Arkansas; it was possible to be a taxpayer for one kind of tax, while not a taxpayer for another kind of tax. *Weiss v. Am. Honda Fin. Corp.*, 360 Ark. 208, 200 S.W.3d 381 (2004).

Automobiles.

Automobiles, whether old or new, sold subsequent to the effective date of Acts 1935, No. 233, were subject to the tax, unless received as part of the purchase price. *S.R. Thomas Auto Co. v. Wiseman*, 192 Ark. 584, 93 S.W.2d 138 (1936) (decision under prior law).

This section relates to the method of collection and does not impose a use tax; therefore, sale of automobiles completed in another state and brought by owner into this state was not taxable under this section. *Cook v. Southeast Ark. Transp.*

Co., 211 Ark. 831, 202 S.W.2d 772 (1947) (decision prior to enactment of § 26-53-101 et seq.).

Legislative Intent.

The amendment of subsection (b) of this section by Acts 1995, No. 268 was not an attempt by the legislature to retroactively change subsection (a) of this section or § 26-53-126(a). *Pledger v. Mid-State Constr. & Materials, Inc.*, 325 Ark. 388, 925 S.W.2d 412 (1996).

Trailers.

There is no statutory authority to collect sales tax directly from purchaser of

house trailer used as home and not required to be licensed. *Cheney v. Frederick*, 239 Ark. 466, 390 S.W.2d 121 (1965).

Cited: *U-Drive-'Em Serv. Co. v. Hardin*, 205 Ark. 501, 169 S.W.2d 584 (1943); *Commissioner of Revenues v. Belote*, 226 Ark. 295, 289 S.W.2d 665 (1956); *Republic Steel Corp. v. McCastlain*, 240 Ark. 979, 403 S.W.2d 90 (1966); *Martin v. Couey Chrysler Plymouth, Inc.*, 308 Ark. 325, 824 S.W.2d 832 (1992); *Pledger v. Brunner & Lay, Inc.*, 308 Ark. 512, 825 S.W.2d 599 (1992).

26-52-511. Prepaid funeral contracts.

(a) A person who purchases a prepaid funeral contract may pay gross receipts taxes on the tangible personal property purchased in the prepaid funeral contract on the date the prepaid funeral contract is purchased in lieu of paying such taxes at the time of the person's death.

(b) The rate of the tax shall be the gross receipts tax rate in effect pursuant to this chapter at the time the prepaid funeral contract is purchased.

(c) Each prepaid funeral contract shall state the following: "ALL SALES TAXES DUE PURSUANT TO THE ARKANSAS GROSS RECEIPTS TAX ACT WHICH ARE NOT PAID IN FULL AS OF THE DATE OF THIS CONTRACT ARE DUE UPON THE DEATH OF THE INDIVIDUAL FOR WHOM THIS CONTRACT IS PURCHASED."

History. Acts 1999, No. 598, § 1.

Publisher's Notes. Former § 26-52-511, concerning refund of athletic and interscholastic event admissions, was repealed by Acts 1995, No. 124, § 1. The section was derived from Acts 1973, No. 516, §§ 1, 3; A.S.A. 1947, §§ 84-1941, 84-1943. For present law, see § 26-52-412.

Cross References. Sale of prepaid funeral benefits, § 23-40-101 et seq.

Effective Dates. Acts 1999, No. 598, § 2, provided: "The provisions of this act are effective as of January 1, 2000."

26-52-512. Tax payments by retailers.

(a) All retailers within the State of Arkansas registered to collect the Arkansas gross receipts tax and having average net sales of more than two hundred thousand dollars (\$200,000) per month for the preceding calendar year shall make prepayment of sales tax by electronic funds transfer, as defined in § 26-19-101, according to one (1) of the following payment options:

(1)(A) The taxpayer may elect to make two (2) tax payments by electronic funds transfer for the current calendar month. Each payment shall be equal to forty percent (40%) of the tax due on the monthly average net sales on or before the twelfth and twenty-fourth of each month.

(B) The balance of actual collections for the month shall be remitted with the monthly gross receipts tax report due by the twentieth day of the following month; or

(2)(A) The taxpayer may elect to pay by electronic funds transfer an amount equal to or exceeding eighty percent (80%) of the gross receipts tax liability for the current calendar month on or before the twenty-fourth of each month.

(B) The balance of actual collections for the month shall be remitted with the monthly gross receipts tax report due by the twentieth day of the following month.

(b)(1)(A) Every taxpayer who timely remits the prepayments required by subsection (a) of this section and who timely files and pays the taxpayer's monthly gross receipts tax report shall be entitled to a discount.

(B) The discount shall be the lesser of two percent (2%) of the reported monthly gross tax, or one thousand dollars (\$1,000).

(2)(A) Failure to pay tax prepayments when due shall result in the assessment of a penalty equal to five percent (5%) of the amount of each required tax prepayment.

(B) If a taxpayer elects to prepay according to subdivision (a)(2) of this section and fails to pay eighty percent (80%) of the tax liability by the twenty-fourth of the current month, no penalty shall be assessed if the taxpayer proves that more than twenty percent (20%) of the taxpayer's tax liability arose from sales occurring after the twenty-fourth of the current month but before the last day of the current month.

(3)(A) The aggregate discount available to a taxpayer who operates more than one (1) permitted business location within this state and who does not file a consolidated monthly gross receipts tax report for all locations shall not exceed one thousand dollars (\$1,000) per month.

(B) In the case of a corporate taxpayer that is a parent corporation and that holds fifty percent (50%) or more of the outstanding shares of one (1) or more corporations that are subsidiaries and that are subject to the tax imposed by this chapter, the aggregate discount available to the parent corporation and all subsidiaries shall not exceed one thousand dollars (\$1,000) per month.

(c) For any electronic funds transfer or report required under subsection (a) of this section, the due date of which falls on a Saturday, Sunday, or legal holiday, the electronic funds transfer or report shall be made on the next succeeding business day which is not a Saturday, Sunday, or legal holiday.

(d) As used in this section, "average net sales" means total gross proceeds or gross receipts as defined in this chapter less any deductions allowed by this chapter.

History. Acts 1987 (1st Ex. Sess.), No. 10, § 1; 1992 (2nd Ex. Sess.), No. 6, § 2; 1997, No. 635, § 1; 2003, No. 665, §§ 1, 2; 2003, No. 747, § 4; 2007, No. 827, §§ 223, 224.

Amendments. The 2003 amendment by No. 655, in (a), inserted “by electronic funds transfer, as defined in § 26-19-101”; in (a)(1) and (a)(2), added subdivision designations; in (a)(1)(A) and (a)(2)(A), inserted “by electronic funds transfer”; and added (c)(1) and redesignated former (c) as present (c)(2).

The 2003 amendment by No. 747 repealed (b)(4).

The 2003 amendment by No. 774 deleted (b)(4).

The 2007 amendment, in (b)(3)(B), substituted “taxpayer that is a parent corpo-

ration” for “taxpayer (parent corporation)” and “corporations that are subsidiaries” for “corporations (subsidiaries),” and made a stylistic change; and in (c), inserted “or report” in two places, and deleted former (2) and made related changes.

Effective Dates. Acts 1987 (1st Ex. Sess.), No. 10, § 2, provided that this section shall be effective from and after January 1, 1988.

Acts 1997, No. 635, § 2 provided that this act shall become effective on January 1, 1998.

Acts 2003, No. 665, § 3, provided: “This act shall become effective on January 1, 2004.”

26-52-513. Sales of motor-driven and all-terrain vehicles.

(a) When any person engaged in the business of selling motor vehicles, motorcycles, motor-driven cycles, three-wheeled all-terrain vehicles, four-wheeled all-terrain vehicles, six-wheeled all-terrain vehicles, or motorized bicycles, sells any motorcycle or motor-driven cycle that is designed or manufactured exclusively for competition or off-road use, or sells any three-wheeled all-terrain vehicle, four-wheeled all-terrain vehicle, six-wheeled all-terrain vehicle, or motorized bicycle, the person shall collect and remit the taxes at the same time and in the same manner as other gross receipts taxes collected by the person.

(b) However, nothing in this section shall be construed so as to affect the manner in which state and local taxes are collected on motorcycles and motor-driven cycles registered for use on the streets and highways of this state.

History. Acts 1989, No. 412, § 1; 2007, No. 305, § 1.

Amendments. The 2007 amendment substituted “all-terrain vehicles” for “all-terrain cycles” in the section heading, twice substituted “three-wheeled all-ter-

rain vehicles, four-wheeled all-terrain vehicles, six-wheeled all-terrain vehicles” for “three or four-wheeled all-terrain cycles” or similar language, and made related changes.

26-52-514. Determining total consideration for sale of vehicle — Alternative method.

(a) The Director of the Department of Finance and Administration is authorized to adopt an alternative method for determining the total consideration for the sale of new or used:

- (1) House trailers or mobile homes under § 26-52-504 [repealed];
- (2) Aircraft under § 26-52-505; and
- (3) Motor vehicles, trailers, or semitrailers under §§ 26-52-510 and 26-53-126.

(b)(1) The alternative method adopted shall incorporate any generally accepted method of determining the value of the item being sold.

(2) If the consideration stated by the parties to the sale is less than the value determined by such generally accepted method of valuation, then for purposes of taxation it shall be presumed that the higher figure is the total consideration, unless the taxpayer provides a contract, bill of sale, or other evidence establishing that the true consideration is less than the value determined under the alternative method.

History. Acts 1991, No. 3, § 8.

A.C.R.C. Notes. Section 26-52-504 referred to in subdivision (a)(1) of this sec-

tion was repealed by Acts 2005, No. 2254, § 2. For current law, see § 26-52-801 et seq.

26-52-515. Refund of sales tax on vehicles returned as defective.

(a) The Director of the Department of Finance and Administration shall refund to a manufacturer any state and local sales or use tax which the manufacturer refunded to the consumer, lessee, or lessor pursuant to the Arkansas New Motor Vehicle Quality Assurance Act, § 4-90-401 et seq., or other defective vehicle buy-back agreement, if the manufacturer provides to the Department of Finance and Administration:

(1) A written request for a refund in accordance with § 26-18-507;

(2) Evidence that the sales tax was paid when the vehicle was registered;

(3) Assignment of the tax refund by the taxpayer;

(4) Proof that the manufacturer refunded the sales tax to the consumer, lessee, or lessor; and

(5) Such other information as shall be required by the director.

(b) Claims for refund of sales or use tax under this section shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq. Any claim must be made in writing and filed within three (3) years from the date the vehicle was first registered.

(c)(1) When a consumer has tendered a trade-in vehicle toward the purchase of the vehicle which is refunded under the Arkansas New Motor Vehicle Quality Assurance Act, § 4-90-401 et seq., or other defective vehicle buy-back agreement, the consumer may apply to the director for a voucher in the amount of the trade-in vehicle's consideration.

(2) The director shall prescribe the forms and other information necessary to issue the voucher.

(3) In calculating the sales tax due upon registration of a subsequent replacement vehicle, the voucher shall be used to reduce the sales price of the subsequent replacement vehicle.

(4) The voucher shall be valid for six (6) months from the date of issuance and may only be used by the consumer to whom it was issued.

History. Acts 1993, No. 285, § 9; 1993, No. 297, § 9.

26-52-516. Refunds for construction of employer-operated child care facilities.

(a) A business which operates, or contracts for the operation of, a child care facility for the primary purpose of providing child care services to its employees may obtain a refund of the gross receipts tax paid on the purchase of construction materials and furnishings used in the initial construction and equipping of the child care facility after the facility is licensed pursuant to § 20-78-201 et seq. and is certified as having an appropriate early childhood program pursuant to § 6-45-109.

(b)(1) "Child care facility" means a child care facility licensed pursuant to § 20-78-201 et seq. To qualify as a child care facility, the child care must provide an appropriate early childhood program as defined in § 6-45-103.

(2) A child care facility may be operated for the use of one (1) or more employers.

History. Acts 1995, No. 850, § 3.

26-52-517. Exemption certificates.

(a) The sales tax liability for all sales of tangible personal property and taxable services is upon the seller unless the purchaser claims an exemption and the seller obtains identifying information of the purchaser and the reason the purchaser is claiming the exemption in the manner prescribed by the Director of the Department of Finance and Administration.

(b)(1) When tangible personal property or taxable services are purchased tax-free pursuant to subsection (a) of this section and the tangible personal property or taxable service is not resold by the purchaser, the purchaser is solely liable for reporting and remitting to the director any tax which should have been paid at the time of purchase.

(2) Use or disposition of the property other than for resale shall be deemed a withdrawal from stock for all purposes, including reporting and remittance of the tax due, and the tax shall be due from the purchaser at the time of the withdrawal from stock.

(c)(1) The director may provide sale for resale certificates to assist retailers in properly accounting for nontaxable sales of tangible personal property or taxable services.

(2) Such certificates must be completed as to the information required in order to be valid and cannot be used to establish any other exemption from sales or use tax.

(d) Any person repeatedly selling the same type of property to the same purchaser for resale may accept a blanket certificate covering more than one (1) transaction.

(e) A seller that follows the exemption requirements as prescribed by the director is relieved from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption.

(f) The relief from liability provided in subsection (e) of this section does not apply to a seller that:

(1) Fraudulently fails to collect the sales tax;

(2) Solicits a purchaser to participate in the unlawful claim of an exemption; or

(3) Accepts an exemption certificate from a purchaser claiming an entity-based exemption if:

(A) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller; and

(B) The Department of Finance and Administration provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in Arkansas.

(g)(1) A seller may obtain a fully completed exemption certificate or capture the relevant data elements required by the department within ninety (90) days after the date of sale.

(2) If the seller has not obtained an exemption certificate or all relevant data elements and the department makes a request for substantiation of the exemption, the seller has one hundred twenty (120) days from the date of the request to prove by other means that the transaction was not subject to sales or use tax or to obtain in good faith a fully completed exemption certificate from the purchaser.

History. Acts 1995, No. 358, § 1; 2007, No. 181, § 27.

Amendments. The 2007 amendment substituted "Exemption" for "Resale" in the section heading; rewrote (a); inserted "or taxable services" or similar language

in two places in (b)(1), and in (c)(1); rewrote (e) and (f); and made related changes.

Effective Dates. Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

26-52-518. Special events.

(a) As used in this section:

(1) "Person" means a person as defined in § 26-52-103;

(2) "Promoter" or "organizer" means a person who organizes or promotes a special event which results in the rental, occupation, or use of any structure, lot, tract of land, motor vehicle, sample or display case, table, or any other similar items for the exhibition and sale of tangible personal property by special events vendors;

(3)(A) "Special event" means an entertainment, amusement, recreation, or marketing event which occurs at a single location on an irregular basis and where tangible personal property is sold.

(B) Such special events shall include, but are not limited to:

(i) Auto shows;

(ii) Boat shows;

(iii) Gun shows;

(iv) Knife shows;

- (v) Home shows;
- (vi) Craft shows;
- (vii) Flea markets;
- (viii) Carnivals;
- (ix) Circuses;
- (x) Bazaars;
- (xi) Fairs; and
- (xii) Art or other merchandise displays or exhibits.

(C) Such special events shall not include any county, district, or state fair or the four states livestock show that has been approved, pursuant to the rules and regulations of the Arkansas Livestock and Poultry Commission, to receive state funds; and

(4) "Special event vendor" means a person making sales of tangible personal property at a special event within the State of Arkansas and who is not permitted under § 26-52-201 et seq.

(b)(1) Special event vendors shall collect sales tax from purchasers of tangible personal property and remit the tax daily, along with a daily sales tax report, to the promoter or organizer.

(2) The isolated sale exemption found in § 26-52-401(17) shall not apply to sales of tangible personal property at special events.

(c) Promoters or organizers of special events shall register for sales tax collection with the Director of the Department of Finance and Administration and shall provide to special event vendors special event sales tax reporting forms and any other information which may be required by the director.

(d) Special event vendors shall file daily special event sales tax reports with organizers or promoters during the special event and remit daily sales tax due along with the daily report.

(e) Within thirty (30) days following the conclusion of the special event, the organizer or promoter shall forward all daily reports and payments to the Department of Finance and Administration along with a completed sales tax report combining all taxable sales and sales tax due.

(f)(1) Promoters and organizers shall not be liable for unreported taxes of special event vendors.

(2) Promoters and organizers shall be liable for their failure to remit to the director sales taxes which are remitted to them by special event vendors.

(3) Promoters and organizers shall be subject to applicable penalty and interest impositions.

History. Acts 1995, No. 370, § 1; 1997, No. 137, § 1; 1997, No. 1256, § 1.

26-52-519. Credit voucher for sales tax on motor vehicles destroyed by catastrophic events.

(a) When a consumer has paid sales taxes on a motor vehicle within the last one hundred eighty (180) days and the motor vehicle is

destroyed or damaged by some catastrophic event resulting from a natural cause to the extent that the value of the motor vehicle is less than thirty percent (30%) of its retail value, as found in the National Automobile Dealers Association's Official Price Guide, or other source approved by the Office of Motor Vehicle, the consumer may apply to the Director of the Department of Finance and Administration for a sales tax credit voucher in the amount of any state and local sales or use taxes paid on the motor vehicle transaction, if the consumer provides to the Department of Finance and Administration:

(1) A written request for a credit voucher in accordance with § 26-18-507;

(2) Evidence that the sales tax was paid when the motor vehicle was registered;

(3) Evidence as to the extent of the destruction or damage to the value of the motor vehicle which is satisfactory to the department to prove the value of the motor vehicle prior to the event and the value after the destruction or damage occurred;

(4) Evidence that the catastrophic event occurred within one hundred eighty (180) days of the motor vehicle's being first registered; and

(5) Any other information as shall be required by the director as necessary to issue the voucher.

(b) Claims for credit vouchers of sales or use tax under this section shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq. Any claim must be made in writing and filed within one (1) year from the date the vehicle was first registered.

(c) When a consumer has tendered a trade-in motor vehicle toward the purchase of the vehicle which is credited under subsection (a) of this section, the consumer may apply to the director for a credit voucher in the amount of the trade-in vehicle's consideration also.

(d) The sales and use tax credit vouchers issued under this section shall be used only to reduce any sales and use taxes due upon registration of a subsequent replacement vehicle. In no event shall a cash refund be given for the sales tax credit voucher or for any excess value of the credit voucher. The credit voucher shall be valid for six (6) months from the date of issuance and may only be used by the consumer to whom it was issued.

(e) The director shall prescribe the forms, the nature of satisfactory proof of the vehicle's values, and any other information as is necessary to issue the credit vouchers under this section.

(f) As used in this section, "natural cause" means an act occasioned exclusively by the violence of nature in which all human agency is excluded from creating or entering into the cause of the damage or injury.

History. Acts 1997, No. 1348, § 1.

Publisher's Notes. A former version of § 26-52-519 as enacted by Acts 1997, No. 391, § 1, concerning liability of sellers for

collection of tax and good faith reliance on claim or documentation of purchaser, was repealed by Acts 2007, No. 181, § 28, effective January 1, 2008.

26-52-520. Communication equipment for commercial trucks.

(a) As used in this section, "such property" means communication equipment or other property installed on commercial trucks or used by the owner to track the location of the truck and to send, receive, or process information to or from the truck.

(b) It is the intent of the General Assembly that the State of Arkansas should not pursue collection of any claim now pending or the execution of any court order with respect to any such claim for the collection of sales or compensating use taxes upon such property.

(c) No taxpayer shall have a claim against the State of Arkansas for any sales of compensating use tax previously paid to the State of Arkansas with respect to such property, except for taxes paid under protest on or after July 1, 1996.

History. Acts 1997, No. 1359, § 31.

nor on April 5, 1997; the veto was overridden

Publisher's Notes. Acts 1997, No. 1359, § 31 was disapproved by the Gover-

den on April 17, 1997.

26-52-521. Sourcing of sales.

(a)(1) This section applies for purposes of determining a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product or service.

(2) This section does not affect the obligation of a purchaser or lessee to remit tax on the use of the product or service to the taxing jurisdictions of that use and does not apply to the sales or use taxes levied on the retail sale excluding lease or rental, of motor vehicles, trailers, or semitrailers that require licensing.

(b) Excluding a lease or rental, the retail sale of a product or service shall be sourced as follows:

(1) If the product or service is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(2) If the product or service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's designated donee occurs, including the location indicated by instructions for delivery to the purchaser or donee known to the seller;

(3) If subdivisions (b)(1) and (2) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(4) If subdivisions (b)(1)-(3) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available if the use of this address does not constitute bad faith; or

(5) If none of the previous rules of subdivisions (b)(1)-(4) of this section apply, including the circumstance in which the seller is without

sufficient information to apply the previous rules, the location will be determined by the address from which tangible personal property was shipped or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(c) The lease or rental of tangible personal property other than property identified in subsection (d) or subsection (e) of this section shall be sourced as follows:

(1)(A) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section.

(B) Periodic payments made after the first payment are sourced to the primary property location for each period covered by the payment.

(C) The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business if use of this address does not constitute bad faith.

(D) The property location shall not be altered by intermittent use at different locations such as use of business property that accompanies employees on business trips and service calls;

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section; and

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis or on the acquisition of property for lease.

(d) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment as defined in subsection (e) of this section shall be sourced as follows:

(1)(A) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location.

(B) The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business if use of this address does not constitute bad faith.

(C) This location shall not be altered by intermittent use at different locations;

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section; and

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis or on the acquisition of property for lease.

(e)(1) Including a lease or rental, the retail sale of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (b) of this section, notwithstanding the exclusion of a lease or rental in subsection (b) of this section.

(2) As used in this section, “transportation equipment” means any of the following:

(A) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(B) Trucks and truck tractors with a Gross Vehicle Weight Rating of ten thousand one pounds (10,001 lbs.) or greater, trailers, semi-trailers, or passenger buses that are:

(i) Registered through the International Registration Plan; and

(ii) Operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(C) Aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; or

(D) Containers designed for use on and component parts attached or secured on the items under subdivision (e)(1) of this section and this subdivision (e)(2).

(f) As used in subsection (b) of this section:

(1) “Receive” and “receipt” mean:

(A) Taking possession of tangible personal property; or

(B) Making first use of services; and

(2) “Receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser.

(g) When a motor vehicle, trailer, or semitrailer that requires licensing is sold to a person who resides in Arkansas, the sale is sourced to the residence of the purchaser.

(h) This section shall apply to all state and local taxes administered by the Department of Finance and Administration.

(i) The Director of the Department of Finance and Administration shall have the authority to delay the implementation of the destination sourcing rules in this section until July 1, 2009, as those sourcing rules relate to florists if the director determines that:

(1) The Streamlined Sales Tax Governing Board, Inc., has changed or postponed the destination sourcing requirement for florists; and

(2) The director determines that such delay is necessary to prevent undue hardship for Arkansas florists.

History. Acts 2003, No. 1273, § 11; 2007, No. 860, § 1.

Amendments. The 2007 amendment added (i).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agree-

ment is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10)

states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially

in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 860, § 7, provided: "Sections 1-6 of this act will become effective on January 1, 2008."

26-52-522. Direct mail sourcing.

(a)(1) Notwithstanding § 26-52-521, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information to show the state and local jurisdictions to which the direct mail is delivered to recipients.

(2)(A) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax, and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis.

(B) A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(3)(A) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser.

(B) In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction if the seller has collected tax pursuant to the delivery information provided by the purchaser.

(b)(1) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information as required by subsection (a) of this section, the seller shall collect the tax according to § 26-52-521(b)(5).

(2) Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(c) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller.

(d) The direct mail form must:

(1) Contain the purchaser's name and sales tax permit number;

(2) State that the purchaser will be remitting sales and use tax to the state; and

(3) Contain any additional information that the Director of the Department of Finance and Administration may require.

History. Acts 2003, No. 1273, § 11.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to

become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-52-523. Credit or rebate on local sales and use tax.

(a) As used in this section:

(1) "Qualifying purchase" means a purchase of tangible personal property or a taxable service:

(A) For which the purchaser may take a business expense deduction pursuant to 26 U.S.C. § 162, as in effect on January 1, 2007;

(B) For which the purchaser may take a depreciation deduction pursuant to 26 U.S.C. § 167, as in effect on January 1, 2007;

(C) By an exempt organization under 26 U.S.C. § 501, as in effect on January 1, 2007, if the purchase would be subject to a business expense deduction or depreciation deduction if the purchaser were not an exempt organization under 26 U.S.C. § 501, as in effect on January 1, 2007; or

(D) By a state, or any county, city, municipality, school district, state-supported college or university, or any other political subdivision of a state, if the purchase would be subject to a business expense deduction or depreciation deduction if the purchaser were not one (1) of the entities enumerated in this subdivision (a)(1)(D); and

(2) "Single transaction" means any sale of tangible personal property or a taxable service reflected on a single invoice, receipt, or statement for which an aggregate sales or use tax amount has been reported and remitted to the state for a single local taxing jurisdiction.

(b)(1) A purchaser that pays any municipal sales or use tax in excess of the tax due on the first two thousand five hundred dollars (\$2,500) of gross receipts or gross proceeds from a qualifying purchase of tangible personal property or a taxable service in a single transaction is entitled to a credit or rebate of the excess amount of municipal sales or use tax paid on each single transaction.

(2) A purchaser that pays any county sales or use tax in excess of the tax due on the first two thousand five hundred dollars (\$2,500) of gross receipts or gross proceeds from a qualifying purchase of tangible personal property or a taxable service in a single transaction is entitled to a credit or rebate of the excess amount of county sales or use tax paid on each single transaction.

(c)(1) A purchaser that is required by § 26-52-501, § 26-52-509, or § 26-53-125 to file a sales or use tax return may file a claim for a credit or rebate under this section with the Director of the Department of Finance and Administration in connection with the sales or use tax return and offset the amount of credit or rebate claimed against any municipal or county sales or use tax due to be remitted with the return.

(2) A purchaser that qualifies for a credit or rebate under this section and is not required to file a sales or use tax return as provided in subdivision (c)(1) of this section may file a claim for a credit or rebate under this section with the director.

(d) No credit or rebate under this section shall be paid for any claim filed after six (6) months from the date of the qualifying purchase or after six (6) months from the date of payment, if later.

(e) A claim for a credit or rebate under this section shall be filed with the local taxing jurisdiction if, at the time the claim is filed, the local sales or use tax that is the subject of the claim has been out of existence for more than sixty (60) days.

(f) No interest shall accrue or be paid on an amount subject to a claim for a credit or rebate under this section.

(g) The director may promulgate rules to administer this section, including without limitation providing an administratively feasible method for filing a claim for a credit or rebate and any necessary forms.

(h) This section does not apply to a local sales tax levied in accordance with § 26-52-303 or § 26-75-502.

(i) Except as provided in subsection (h) of this section, this section applies to any local sales or use tax collected by the director pursuant to any state tax law authorizing a county or municipality to levy a sales or use tax.

History. Acts 2007, No. 179, § 1.

Effective Dates. Acts 2007, No. 179,

§ 2, provided: "Section 1 of this act is effective on January 1, 2008."

SUBCHAPTER 6 — EQUALIZATION OF TAXES FOR BORDER CITIES AND TOWNS

SECTION.

26-52-601. Legislative findings and intent.

26-52-602. Vote to equalize taxes authorized.

26-52-603. Benefits of subchapter for individual taxpayers only.

SECTION.

26-52-604. Individual taxpayers entitled to benefit of subchapter.

26-52-605. Election proceedings.

26-52-606. Election results — Effect.

26-52-607. Levy of use tax.

Effective Dates. Acts 1997, No. 735, § 5: July 1, 1997. Emergency clause provided: "Whereas the General Assembly has determined that the local sales tax rate on sales by vendors in Texarkana, Arkansas is 1% higher than the local use tax rate on sales by out-of-state vendors into Texarkana, Arkansas; that this disparity affects the ability of Texarkana,

Arkansas merchants to compete with out-of-state merchants; that this act will correct the disparity and allow for fair competition. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1997."

Acts 2007, No. 181, § 45: Jan. 1, 2008.

CASE NOTES

Constitutionality.

Acts 1977, No. 48, codified at this subchapter, is not an impermissible delegation of State legislature and taking authority because the issue of equalizing taxes is localized, rather than State-wide, and the act presents a complete plan of what the tax plan would be, if approved, and the voters have no discretion to change the terms of the law as enacted. *Boyd v. Weiss*, 333 Ark. 684, 971 S.W.2d 237 (1998).

The geographical limitations contained

in this act are rationally related to its purposes and the incidental circumstance that it provides a tax incentive for people in surrounding Arkansas cities to move to Texarkana is not determinative of the reasonableness of the act. *Boyd v. Weiss*, 333 Ark. 684, 971 S.W.2d 237 (1998).

Merely because Acts 1977, No. 48 ultimately affects less than all the State's territory does not render it unconstitutional for the purposes of equal protection. *Boyd v. Weiss*, 333 Ark. 684, 971 S.W.2d 237 (1998).

26-52-601. Legislative findings and intent.

(a)(1) In the passage of this subchapter, the General Assembly is cognizant of the inequities faced by cities and towns in this state and their inhabitants when the cities and towns are divided by a state line

from an incorporated city or town in another state in which the tax burden of the citizens of the city or town in the adjoining state is substantially less than the tax burden imposed by the laws of this state upon the citizens of a border city or town in this state.

(2) The General Assembly is also cognizant that these tax inequities offer inducements to citizens who would otherwise settle in Arkansas and operate businesses in Arkansas to move to the border cities in the adjoining states.

(b) The passage of this subchapter is designed to establish a method of equalizing the inequities imposed under the tax laws of this state, thereby offering inducements to persons to establish their homes and businesses in the Arkansas border city or town.

History. Acts 1977, No. 48, § 1; A.S.A. 1947, § 84-1946n.

CASE NOTES

Purpose.

The stated purpose of Acts 1977, No. 48 is to protect border cities by exempting residents from state income taxes who might otherwise move to Texas; the mere fact that the revenue from the increased

sales tax goes into the state treasury does not negate or supercede this purpose. *Boyd v. Weiss*, 333 Ark. 684, 971 S.W.2d 237 (1998).

Cited: *Leathers v. Warmack*, 341 Ark. 609, 19 S.W.3d 27 (2000).

26-52-602. Vote to equalize taxes authorized.

Whenever any city or town in this state is divided by a street state line from an incorporated city or town in an adjoining state in which the other state does not levy a state income tax, the qualified electors of the Arkansas border city or town may vote to equalize the state taxes paid by citizens in the border city or town in Arkansas with the tax advantages of the citizens of the adjoining city or town in the other state in the manner provided in this subchapter.

History. Acts 1977, No. 48, § 2; A.S.A. 1947, § 84-1946.

26-52-603. Benefits of subchapter for individual taxpayers only.

This subchapter is intended to exempt only individual taxpayers from the Arkansas income tax and not to provide exemption for corporations or any taxpayers other than individual taxpayers.

History. Acts 1977, No. 48, § 6; A.S.A. 1947, § 84-1949.

26-52-604. Individual taxpayers entitled to benefit of subchapter.

Any individual taxpayer residing in any border city or town located outside the State of Arkansas shall be entitled to the benefits of the

provisions of this subchapter with respect to income derived by any individual taxpayer from employment or business activity engaged in the Arkansas border city upon which income tax is due the State of Arkansas under the provisions of the Income Tax Act of 1929, § 26-51-101 et seq.

History. Acts 1977, No. 48, § 4; A.S.A. 1947, § 84-1948.

26-52-605. Election proceedings.

(a) The governing body of an Arkansas border city or town, as described in § 26-52-602, by ordinance, may call a special election, or, upon petition of not less than ten percent (10%) of the qualified electors of the Arkansas border city or town, as determined by the number of votes cast in the Arkansas border city or town for all candidates for election to the Office of Governor of Arkansas in the immediately preceding general election, filed with the city clerk of the city or town petitioning that a special election be called, a special election shall be called in accordance with § 7-5-103(b) in the city or town on the question of the imposition of an additional state tax of one percent (1%) to be administered and collected as a local sales tax upon the gross receipts or gross proceeds derived from taxable sales within the border city or town under the provisions of this chapter, and the proceeds derived therefrom shall benefit the State of Arkansas in lieu of the state income tax law applying to the net taxable income derived by individuals who are residents of the border city or town.

(b) The special election shall be called not later than one hundred twenty (120) days following the adoption of the ordinance by the governing body of the city or town, or the filing of a petition requesting the special election.

(c) Notice of the special election shall be given by publication in some newspaper of general circulation within the Arkansas border city or town on two (2) occasions not more than thirty (30) days and not less than ten (10) days prior to the date of the special election.

(d) The special election shall be held by the county board of election commissioners, and the special election judges and clerks shall be selected and the special election shall be conducted and the results shall be tabulated and certified in the manner now provided by law for the holding of elections in this state.

(e) On the ballot shall be printed the following issue:

☐ FOR the levy of an additional one percent (1%) state gross receipts tax in the City of,, County, Arkansas, in lieu of paying state income taxes by individuals who are residents of said city (town).

☐ **AGAINST** the levy of an additional one percent (1%) state gross receipts tax in the City of,
.....County, Arkansas, in lieu of paying state income taxes by individuals who are residents of said city (town).

(f) The voter shall cast the vote of his or her choice by placing an "X" opposite the issue of his or her choice.

History. Acts 1977, No. 48, § 3; 1977, No. 177, § 1; A.S.A. 1947, § 84-1947; Acts 2005, No. 2145, § 66; 2007, No. 181, § 29; 2007, No. 1049, § 88.

Publisher's Notes. Acts 1977, No. 48, § 5, provided that the election authorized by that act be held on or before October 1, 1977, and not thereafter. The section further provided that if at an election held under the act, the qualified electors voted to levy the additional gross receipts tax in lieu of payment of state income taxes, the tax would be effective January 1, 1978, and thereafter.

Amendments. The 2005 amendment redesignated former (b) as (b)(1); substituted "forty-five (45)" for "sixty (60)" in (b)(1); and added (b)(2).

The 2007 amendment by No. 181 inserted "to be administered and collected as a local sales tax" following "(1%)" in (a).

The 2007 amendment by No. 1049 inserted "in accordance with § 7-5-103(b)" in (a); and rewrote (b).

Effective Dates. Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

26-52-606. Election results — Effect.

(a)(1) In the event a majority of the qualified electors of the Arkansas border city or town voting on the issue at the election vote FOR the imposition of an additional one percent (1%) gross receipts tax on taxable sales in the border city or town, then the additional one percent (1%) tax shall be levied effective January 1 next following the date of the election and thereafter.

(2) For as long as the additional one percent (1%) gross receipts tax is levied in the city, individuals who are residents of the city shall not be subject to the imposition of the Arkansas income tax, as levied by the Income Tax Act of 1929, § 26-51-101 et seq.

(b) If a majority of the qualified electors of the Arkansas border city or town shall vote AGAINST the levy of an additional one percent (1%) gross receipts tax in lieu of payment of the state income tax in the city, then the citizens of the city or town shall continue to pay state gross receipts tax and state income tax, as provided by law.

History. Acts 1977, No. 48, § 3; 1977, No. 177, § 1; A.S.A. 1947, § 84-1947.

26-52-607. Levy of use tax.

In all cities in this state divided by a street state line from an incorporated city or town in an adjoining state which does not impose an income tax that have adopted a one percent (1%) state sales tax pursuant to this subchapter, there is also levied an additional one percent (1%) state use tax which shall be administered and collected as

a local tax, and enforced in accordance with the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

History. Acts 1997, No. 735, § 1; 2007, No. 181, § 30.

Amendments. The 2007 amendment inserted “and collected as a local tax.”

Effective Dates. Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

SUBCHAPTER 7 — ECONOMIC INVESTMENT TAX CREDIT ACT

SECTION.

26-52-701. Title.

26-52-702. Definitions.

26-52-703. Precluded provisions supplemental.

SECTION.

26-52-704. Credit granted.

26-52-705. Qualification and determination of credit.

26-52-706. Administration.

Cross References. Projects under Manufacturer’s Investment Sales and Use Tax Credit Act of 1985, § 15-4-1705.

Effective Dates. Acts 1985, No. 529, §§ 8, 9: Jan. 1, 1985. Emergency clause provided: “There is hereby found and determined by the General Assembly that industrial concerns in Arkansas are experiencing intense competition, both domestic and from abroad; that to remain competitive in domestic and international markets requires, among other things, new investments in modern, efficient plants and equipment by industry; that the investments required for industrial plant modernization or expansion may represent extraordinary investments; that the incentives afforded by this Act can serve to stimulate the economy of the State of Arkansas and that failure to act immediately will result in the loss of jobs for Arkansans. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and welfare shall be in full force and effect from and after its passage and approval.” Approved Mar. 25, 1985.

Acts 1997, No. 807, § 28: Mar. 25, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly of this State that unemployment and economic underdevelopment has reached intolerable levels in certain portions of this State, and that the establishment of tax incentives afforded by this Act are critical to the development and expansion of job opportunities in those areas. Therefore, an emergency is declared to

exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 995, § 10: Mar. 31, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that existing Arkansas businesses must remain competitive in today’s global economy; that the tax incentive provided by this act is necessary to provide businesses with the incentive to invest in Arkansas and hire Arkansans; that other states compete with Arkansas for the location or expansion of business activity and this incentive is also necessary to offer the companies a business environment compatible with other states; and that without this incentive companies considering locations or expansions of their businesses may choose to locate in another state, depriving Arkansans of these jobs and the economic benefit that the jobs bring to the state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved

nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by

the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

26-52-701. Title.

This subchapter may be referred to and cited as the "Economic Investment Tax Credit Act".

History. Acts 1985, No. 529, § 1; A.S.A. 1947, § 84-1951; Acts 1999, No. 995, § 1.

26-52-702. Definitions.

As used in this subchapter:

(1) "Corporate headquarters" means the home or center of operations, including research and development, of a national or multinational corporation;

(2) "Defense industry project" means an investment of at least five million dollars (\$5,000,000) and an increase in employment of at least two hundred fifty (250) full-time permanent employees by a company which manufactures components for the defense industry and whose unit cost exceeds five hundred thousand dollars (\$500,000);

(3) "Distribution center" means a facility for the reception, storage, or shipping of:

(A) A business' own products which the business wholesales to retail businesses or ships to its own retail outlets;

(B) Products owned by other companies with which the business has contracts for storage and shipping if seventy-five percent (75%) of the sales revenue is from out-of-state customers; or

(C) Products for sale to the general public if seventy-five percent (75%) of the sales revenue is from out-of-state customers;

(4) "Eligible business" means a business eligible for sales and use tax credits under the provisions of this subchapter that has been in continuous operation in Arkansas for at least two (2) years prior to the initial application to the Director of the Arkansas Economic Development Commission, has obtained a direct-pay sales and use tax permit from the Revenue Division of the Department of Finance and Administration under the provisions of § 26-52-509, and is classified as one (1) or more of the following types of businesses:

(A) Manufacturers classified in federal Standard Industrial Classification codes 20-39, including semiconductor and microelectronic manufacturers;

(B)(i) Computer businesses primarily engaged in providing computer programming services, the design and development of prepackaged software, businesses engaged in digital content production and preservation, computer processing and data preparation services,

information retrieval services, and computer and data processing consultants and developers.

(ii) All businesses in this group must derive at least seventy-five percent (75%) of their revenue from out-of-state sales and have no retail sales to the public;

(C)(i) Businesses primarily engaged in motion picture production.

(ii) All businesses in this group must derive at least seventy-five percent (75%) of their revenue from out-of-state sales and have no retail sales to the public;

(D) Businesses primarily engaged in commercial physical and biological research as classified by Standard Industrial Classification code 8731;

(E) A distribution center with no retail sales to the general public, unless seventy-five percent (75%) of the sales revenue is from out-of-state customers;

(F) An office sector business with no retail sales to the general public;

(G) A corporate or regional headquarters with no retail sales to the general public; and

(H) A coal mining operation that employs twenty-five (25) or more net full-time permanent positions;

(5) "Modernization" means to increase efficiency or to increase productivity of the business through investment in machinery or equipment, or both, and shall not include costs for routine maintenance;

(6) "Office sector" means control centers that influence the environment in which data processing, customer service, credit accounting, telemarketing, claims processing, and other administrative functions that act as production centers;

(7) "Person" means a person as defined by § 26-18-104;

(8)(A) "Project" means any construction, expansion, or modernization in Arkansas by an eligible business.

(B) The investment must exceed five million dollars (\$5,000,000) or six million dollars (\$6,000,000) for projects involving multiple locations within the State of Arkansas, including the cost of the land, buildings, and equipment used in the construction, expansion, or modernization and which construction, expansion, or modernization has been approved by the Arkansas Economic Development Commission as a construction, expansion, or modernization project which qualifies for the credit under the provisions of this subchapter;

(9) "Regional headquarters" means the center of operations for a specific geographic area; and

(10) "Routine maintenance" means the replacement of existing machinery parts with like parts.

History. Acts 1985, No. 529, § 2; A.S.A. 1999, No. 995, § 2; 2001, No. 737, § 1; 1947, § 84-1952; Acts 1997, No. 540, § 55; 2001, No. 1065, § 2.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Taxation, 8 U. Ark. Little Rock L.J. 601.

U. Ark. Little Rock L. Rev. Survey of

Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-52-703. Precluded provisions supplemental.

(a) A recipient of benefits under this subchapter is precluded from receiving benefits under the Arkansas Enterprise Zone Act of 1993, § 15-4-1701 et seq., for the same project.

(b) A recipient of benefits under this subchapter is precluded from receiving benefits under the Manufacturer's Investment Tax Credit Act, § 26-51-2001 et seq., for the same project.

History. Acts 1985, No. 529, § 6; A.S.A. 1947, § 84-1956; Acts 1999, No. 995, § 3; 2001, No. 1661, § 8.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-52-704. Credit granted.

There is granted a credit against the state sales and use tax liability of an eligible business of seven percent (7%) of the amount of the total project cost of any project, subject to the limit set out in § 26-52-705.

History. Acts 1985, No. 529, § 3; A.S.A. 1947, § 84-1953; Acts 1999, No. 995, § 4.

26-52-705. Qualification and determination of credit.

(a)(1) In order to qualify for and receive the credits afforded by this subchapter, any eligible business undertaking a project shall submit a project plan to the Director of the Arkansas Economic Development Commission thirty (30) days prior to the start of construction.

(2) The plan submitted to the Arkansas Economic Development Commission shall contain such information as may be required by the Director of the Arkansas Economic Development Commission to determine eligibility.

(b)(1) Upon determination by the Director of the Arkansas Economic Development Commission that the project qualifies for credit under this subchapter, the Director of the Arkansas Economic Development Commission shall certify to the Director of the Department of Finance and Administration that the project is qualified and transmit with his or her certification the documents upon which the certification was based or copies of the documents.

(2) Upon receipt by the Director of the Department of Finance and Administration of a certification from the Director of the Arkansas Economic Development Commission that an eligible business as defined by § 26-52-702 is entitled to credit under this subchapter, the Director of the Department of Finance and Administration shall provide forms to the eligible business on which to claim the credit.

(c)(1) At the end of the calendar year in which the application was made to the Director of the Arkansas Economic Development Commission and at the end of each calendar year thereafter until the project is completed, the eligible business shall certify, on the form provided by the Director of the Department of Finance and Administration, the amount of expenditures on the project during the preceding calendar year.

(2)(A) Upon receipt of the form certifying expenditures, the Director of the Department of Finance and Administration shall determine the amount due as a credit for the preceding calendar year and issue a memorandum of credit to the eligible business in the amount of seven percent (7%) of the expenditure.

(B)(i)(a)(1) The credit shall then be applied against the eligible business' state sales or use tax liability in the year following the year of the expenditure.

(2) However, if the credit is not used in the calendar year following the expenditure, it may be carried over to the next succeeding calendar year for a total period of six (6) years following the year in which the credit was first available for use or until the credit is exhausted, whichever occurs first.

(b) For eligible defense projects, if the credit is not used in the calendar year following the expenditure, the credit may be carried over to the next succeeding calendar year for a total of nine (9) years following the year in which the credit was first available for use or until the credit is exhausted, whichever occurs first.

(ii)(a) The credit shall be used by the eligible business as a credit against the regular direct-pay sales or use tax return of the business.

(b) In no event shall the credit used on any regular return be more than fifty percent (50%) of the eligible business' total state sales or use tax liability for the reporting period, except that a company with an eligible defense industry project may claim a credit for one hundred percent (100%) of the sales and use tax liability for the reporting period.

(iii) The Director of the Department of Finance and Administration may require proof of these expenditures.

(iv)(a) The Director of the Department of Finance and Administration may examine those records necessary and specific to the project to determine credit eligibility.

(b) Any credits disallowed will be subject to payment in full.

(d) For all projects approved after July 1, 1997, in order to receive credit for project costs, the project costs must be incurred within five (5) years from the date of certification of the project plan by the Director of the Arkansas Economic Development Commission.

(e)(1) If project costs exceed the initial project cost estimate included in the financial incentive plan, the business shall amend the financial incentive plan to include updated cost figures.

(2) Amendments that exceed fifty percent (50%) of the original financial incentive plan estimate shall be submitted as a new project.

(3) An amendment shall not change the start date of the original project.

History. Acts 1985, No. 529, § 4; A.S.A. §§ 56-58; 1997, No. 807, § 21; 1999, No. 1947, § 84-1954; Acts 1997, No. 540, 995, § 5; 2001, No. 737, §§ 2, 3.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-52-706. Administration.

(a) A person claiming credit under a provision of this subchapter is a “taxpayer” within the meaning of § 26-18-104 and shall be subject to all applicable provisions of § 26-18-104.

(b) Administration of the provisions of this subchapter shall be under the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(c) The Director of the Arkansas Economic Development Commission may promulgate such rules and regulations as are necessary to carry out the intent and purposes of this subchapter.

History. Acts 1985, No. 529, § 5; A.S.A. 1947, § 84-1955; Acts 1997, No. 540, § 59; 1999, No. 995, § 6.

SUBCHAPTER 8 — CUSTOM MANUFACTURED HOMES

SECTION.

26-52-801. Definitions.

26-52-802. Sale of manufactured, modular, or mobile homes.

SECTION.

26-52-803. Enforcement.

26-52-804. [Repealed.]

Effective Dates. Acts 2003, No. 365, § 3: Aug. 1, 2003. Effective date clause provided: “This act shall become effective on the first day of the calendar month following the ninetieth day after the sine

die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days.”

26-52-801. Definitions.

As used in this subchapter:

(1) “Manufactured home” means a factory-built structure produced in accordance with the National Manufactured Housing Construction

and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., and designed to be used as a dwelling unit;

(2) "Mobile home" means a structure built in a factory prior to the enactment of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., and designed to be used as a dwelling unit;

(3) "Modular home" means a factory-built structure produced in accordance to state or local construction codes and standards and designed to be used as a dwelling unit; and

(4) "Sales price" means the purchase price of the new manufactured home or modular home to be paid by the purchaser as set forth on the actual invoice or bill of sale, excluding transportation and delivery fees, installation fees, and other items or services that are to be included as part of the final sale of the new manufactured home or modular home by the retailer before the consideration of a trade-in allowance or down payment paid in cash or otherwise.

History. Acts 1985, No. 1068, § 1; A.S.A. 1947, § 84-1936.1; Acts 2003, No. 365, § 1; 2005, No. 2254, § 1.

Amendments. The 2003 amendment substituted "modular home" for "unless the context otherwise requires, 'custom manufactured homes'" in (a); substituted "modular home" for "custom manufactured home" in (b) and (c); and, in (c), inserted "a manufactured home as defined in § 20-25-102(8) or" and substituted "§ 26-52-504(c)" for "Acts 1973, No. 510, § 2."

The 2005 amendment rewrote this section.

Effective Dates. Acts 2003, No. 365, § 3: Aug. 1, 2003. Effective date clause provided: "This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days."

26-52-802. Sale of manufactured, modular, or mobile homes.

(a) Whether from an established business or by a licensed retailer, every person selling manufactured homes or modular homes in this state shall obtain a permit and report and remit to the Director of the Department of Finance and Administration as provided in this chapter, together with:

(1) Copies of invoices, sales, tickets, or bills of sale reflecting the dates of all sales of such new manufactured homes or modular homes;

(2) The purchaser's name and address;

(3) The make, year, model, serial number, and sales price of each manufactured home or modular home; and

(4) If applicable, the amount of tax collected from the purchaser.

(b) Upon the initial sale of a new manufactured home or modular home, the tax levied by this chapter shall be collected on sixty-two percent (62%) of the sales price of the new manufactured home or modular home.

(c) No tax shall be due on the sale of a mobile home or on a subsequent sale of a manufactured home or modular home, including

any tax levied by this chapter or any other gross receipts tax levied by the state.

History. Acts 1985, No. 1068, § 2; A.S.A. 1947, § 84-1936.2; Acts 2003, No. 365, § 1; 2005, No. 2254, § 1.

Amendments. The 2003 amendment substituted “modular” for “custom manufactured.”

The 2005 amendment rewrote this section.

Effective Dates. Acts 2003, No. 365,

§ 3; Aug. 1, 2003. Effective date clause provided: “This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days.”

26-52-803. Enforcement.

(a) Any permittee who fraudulently attempts to evade any provision of this section or of this chapter shall be subject to having his or her permit revoked after notice and hearing provided in § 26-52-208.

(b)(1) Upon payment of all applicable registration and title fees, any manufactured home retailer licensed pursuant to § 27-14-601(a)(6) that makes a subsequent purchase of a manufactured home for which the seller does not have a certificate of title may register the manufactured home for the sole purpose of obtaining a certificate of title.

(2) No license plate or decal shall be provided with the registration.

History. Acts 1985, No. 1068, § 3; A.S.A. 1947, § 84-1936.3; Acts 2003, No. 365, § 1; 2005, No. 2254, § 1.

Amendments. The 2003 amendment substituted “modular” for “custom manufactured” and made minor stylistic changes.

The 2005 amendment rewrote this section.

Effective Dates. Acts 2003, No. 365,

§ 3; Aug. 1, 2003. Effective date clause provided: “This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days.”

26-52-804. [Repealed.]

Publisher’s Notes. This section, concerning furnishings not exempt, was repealed by Acts 2005, No. 2254, § 1. The

section was derived from Acts 1985, No. 1068, § 5; A.S.A. 1947, § 84-1936.4; Acts 2003, No. 365, § 1.

SUBCHAPTER 9 — STEEL MILL TAX INCENTIVES

SECTION.

26-52-901. Definitions.

26-52-902. Certification required.

26-52-903. Exemption from taxes.

26-52-904 — 26-52-910. [Reserved.]

26-52-911. Definitions.

26-52-912. Certification required — Contents.

SECTION.

26-52-913. Net operating loss deduction
— Carry forward.

26-52-914. Exemption of sales of natural gas and electricity.

Effective Dates. Acts 1987, No. 48, § 7; Feb. 16, 1987. Emergency clause provided: "Unemployment in Arkansas has reached emergency proportions and can only be remedied by attracting new industry. Offering tax incentives is an effective method of attracting business to Arkansas. This Act offers incentives which will reduce unemployment levels. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective from and after its passage and approval."

Acts 1987, No. 575, § 5; Apr. 2, 1987. Emergency clause provided: "Unemployment in Arkansas has reached emergency proportions and can only be remedied by attracting new industry and encouraging the expansion and further development of existing industry. Offering tax incentives is an effective method of attracting and encouraging the growth of industry in Arkansas. This Act is necessary to define the class of industry to which such economic incentives will be extended. The extension of such incentives will reduce unemployment levels in Arkansas. Therefore, an emergency is declared to exist and this Act, being necessary for the immedi-

ate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 136, § 8; Feb. 13, 1991. Emergency clause provided: "Unemployment in Arkansas has reached emergency proportions and can only be remedied by attracting new industry. Offering tax incentives is an effective method of attracting business to Arkansas. This Act offers incentives which will reduce unemployment levels. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective from and after its passage and approval."

Acts 1991, No. 137, § 8; Feb. 13, 1991. Emergency clause provided: "Unemployment in Arkansas has reached emergency proportions and can only be remedied by attracting new industry. Offering tax incentives is an effective method of attracting business to Arkansas. This Act offers incentives which will reduce unemployment levels. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective from and after its passage and approval."

26-52-901. Definitions.

As used in this subchapter:

(1) "Invested" includes expenditures made from the proceeds of bonds, including interim notes or other evidence of indebtedness, issued by a municipality, county, or an agency or instrumentality of a municipality, county, or the State of Arkansas, if the obligation to repay the bonds, including interest thereon, is a legal binding obligation, directly or indirectly, of the taxpayer; and

(2) "Qualified manufacturer of steel" means any natural person, company, or corporation engaged in the manufacture, refinement, or processing of steel whenever more than fifty percent (50%) of the electricity or more than fifty percent (50%) of the natural gas consumed in the manufacture, refinement, or processing of steel is used to power an electric arc furnace or furnaces, continuous casting equipment, or rolling mill equipment in connection with the melting, continuous casting, or rolling of steel or in the preheating of steel for processing through a rolling mill or rolling mills, or both.

History. Acts 1987, No. 48, § 1; 1987, No. 575, § 1.

Publisher's Notes. Acts 1987, No. 48, § 1, is also codified as § 26-51-1201.

26-52-902. Certification required.

(a) To claim the benefits of this subchapter, a taxpayer must obtain a certification from the Director of the Arkansas Economic Development Commission certifying to the Revenue Division of the Department of Finance and Administration that the taxpayer:

(1) Operates a steel mill in Arkansas which began production after February 16, 1987; and

(2) Has invested, after February 16, 1987, in excess of one hundred twenty million dollars (\$120,000,000) in the steel mill, which investment expenditure is for one (1) of the following:

(A) Property purchased for use in the construction of a building or buildings or any addition or improvement thereon to house the steel mill;

(B)(i) Machinery and equipment to be located in or in connection with the steel mill.

(ii) Motor vehicles of a type subject to registration shall not be considered as machinery and equipment; or

(C) Project planning costs or construction labor costs, including on-site direct labor and supervision, whether employed by a contractor or the project owner; architectural fees or engineering fees, or both; right-of-way purchases; utility extensions; site preparation; parking lots; disposal or containment systems; water and sewer treatment systems; rail spurs; streets and roads; purchase of mineral rights; land; buildings; building renovation; production, processing, and testing equipment; freight charges; building demolition; material handling equipment; drainage systems; water tanks and reservoirs; storage facilities; equipment rental; contractor's cost plus fees; builders risk insurance; original spare parts; job administrative expenses; office furnishings and equipment; rolling stock; capitalized start-up costs as recognized by generally accepted accounting principles; and other costs related to the construction.

(b) As used in subdivision (a)(2)(C) of this section, "production, processing, and testing equipment" includes machinery and equipment essential for the receiving, storing, processing, and testing of raw materials and the production, storage, testing, and shipping of finished products, including facilities for the production of steam, electricity, chemicals, and other materials that are essential to the manufacturing process, but which are consumed in the manufacturing process and do not become essential components of the finished product.

(c) To claim the benefits of § 26-52-903, a taxpayer must be certified pursuant to subsection (a) of this section or obtain a certification from the Director of the Arkansas Economic Development Commission certifying to the division that the taxpayer meets the definition of "qualified manufacturer of steel" contained in § 26-52-901.

History. Acts 1987, No. 48, § 1; 1987, No. 575, § 1; 1993, No. 403, § 24; 1997, No. 540, §§ 60, 91.

Publisher's Notes. Acts 1987, No. 48, § 1, is also codified as § 26-51-1202.

26-52-903. Exemption from taxes.

Sales of natural gas and electricity to taxpayers qualified under § 26-52-902 for use in connection with the steel mill shall be exempt from:

- (1) The gross receipts tax levied by this chapter;
- (2) The Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.; and
- (3) Any other state or local tax administered under this chapter or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

History. Acts 1987, No. 48, § 4; 1987, No. 575, § 2.

the exemptions granted pursuant to this section shall become effective on and after

Publisher's Notes. Acts 1987, No. 575, § 2, provided, in part, that the benefits of

September 1, 1988.

26-52-904 — 26-52-910. [Reserved.]

26-52-911. Definitions.

As used in this section and §§ 26-52-912 — 26-52-914:

(1) "Invested" includes expenditures made from the proceeds of bonds including interim notes or other evidence of indebtedness issued by a municipality, county, or an agency or instrumentality of a municipality, county, or the State of Arkansas, if the obligation to repay the bonds, including interest thereon, is a legal, binding obligation, directly or indirectly, of the taxpayer;

(2) "Production and processing equipment" includes machinery and equipment essential for the receiving, storing, processing, and testing of raw materials and the production, storage, testing, and shipping of finished products, including facilities for the production of steam, electricity, chemicals, and such other materials that are essential to the manufacturing process, but which are consumed in the manufacturing process and do not become essential components of the finished product; and

(3) A taxpayer is a "qualified manufacturer of steel" if:

(A) The taxpayer is a natural person, company, or corporation engaged in the manufacture, refinement, or processing of steel; and

(B) More than fifty percent (50%) of the electricity or natural gas consumed in the manufacture, refinement, or processing of steel by the taxpayer is used either:

(i) To power an electric arc furnace or furnaces, continuous casting equipment, or rolling mill equipment in connection with melting, continuous casting, or rolling of steel; or

(ii) In the preheating of steel for processing through a rolling mill.

History. Acts 1991, No. 136, § 1; 1991, 136 and 137, § 1, are also codified as No. 137, § 1. § 26-51-1211.

Publisher's Notes. Acts 1991, Nos.

26-52-912. Certification required — Contents.

To claim the benefits of §§ 26-52-911 — 26-52-914, a taxpayer must obtain certification prior to June 30, 1994, from the Director of the Arkansas Economic Development Commission certifying to the Revenue Division of the Department of Finance and Administration that:

(1) The taxpayer is a "qualified manufacturer of steel" as defined in § 26-52-911; or

(2)(A) The taxpayer operates a steel mill in Arkansas which began production after February 13, 1991; and

(B) The taxpayer has invested, after February 13, 1991, in excess of one hundred twenty million dollars (\$120,000,000) in the steel mill, which investment expenditure is for one (1) of the following:

(i) Property purchased for use in the construction of a building or buildings or any addition or improvement thereon to house the steel mill;

(ii) Machinery and equipment to be located in or in connection with the steel mill. Motor vehicles of a type subject to registration shall not be considered as machinery and equipment; or

(iii) Project planning costs; construction labor costs, including on-site direct labor and supervision whether employed by a contractor or the project owner; architectural or engineering fees; right-of-way purchases; utility extensions; site preparation; parking lots; disposal or containment systems; water and sewer treatment systems; rail spurs; streets and roads; purchase of mineral rights; land; buildings; building renovation; production, processing, and testing equipment; freight charges; building demolition; material handling equipment; drainage systems; water tanks and reservoirs; storage facilities; equipment rental; contractor's cost plus fees; builders risk insurance; original spare parts; job administration expenses; office furnishings and equipment; rolling stock; capitalized start-up costs as recognized by generally accepted accounting principles; and other costs related to the construction.

History. Acts 1991, No. 136, § 2; 1991, 136 and 137, § 2, are also codified as No. 137, § 2; 1997, No. 540, § 92. § 26-51-1212.

Publisher's Notes. Acts 1991, Nos.

26-52-913. Net operating loss deduction — Carry forward.

Taxpayers qualified under § 26-52-912(b) and entitled to a net operating loss deduction as provided in § 26-51-427 may carry forward that deduction to the next-succeeding taxable year following the year of such net operating loss and annually thereafter for a total period of ten (10) years or until such net operating loss has been exhausted,

whichever is earlier. The net operating loss deduction must be carried forward in the order named above.

History. Acts 1991, No. 136, § 3; 1991, 136 and 137, § 3, are also codified as No. 137, § 3. § 26-51-1213.

Publisher's Notes. Acts 1991, Nos.

RESEARCH REFERENCES

A.L.R. Construction and application of ing net operation loss deductions. 33 state corporate income tax statutes allow- A.L.R.5th 509.

26-52-914. Exemption of sales of natural gas and electricity.

(a) Sales of natural gas and electricity to taxpayers qualified under § 26-52-912(a) or § 26-52-912(b) for use in connection with the steel mill shall be exempt from:

- (1) The Arkansas gross receipts tax levied by this chapter;
- (2) The Arkansas compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.; and
- (3) Any other state or local tax administered under this chapter or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) The benefits of exemptions granted pursuant to this section shall become effective on July 1, 1991.

History. Acts 1991, No. 136, § 4; 1991, 136 and 137, § 4, are also codified as No. 137, § 4. § 26-51-1214.

Publisher's Notes. Acts 1991, Nos.

SUBCHAPTER 10 — TOURISM GROSS RECEIPTS TAX

SECTION.

26-52-1001 — 26-52-1006. [Repealed.]

26-52-1001 — 26-52-1006. [Repealed.]

Publisher's Notes. This subchapter, 1995, No. 284, § 2.
concerning the tourism gross receipts tax, 26-52-1003. Acts 1989, No. 38, § 3.
was repealed by Acts 2007, No. 182, §§ 6- 26-52-1004. Acts 1989, No. 38, § 4.
11. The subchapter was derived from the 26-52-1005. Acts 1989, No. 38, § 5.
following sources: 26-52-1006. Acts 1989, No. 38, § 6.

26-52-1001. Acts 1989, No. 38, § 1. For current law, see § 26-63-401 et seq.
26-52-1002. Acts 1989, No. 38, § 2;

SUBCHAPTER 11 — ARKANSAS MEDICAID GROSS RECEIPTS TAX ACT

SECTION.

26-52-1101 — 26-52-1109. [Expired.]

26-52-1101 — 26-52-1109. [Expired.]

Publisher's Notes. Acts 1991, No. 889, § 1 provided, in part, that this subchapter, the Arkansas Medicaid Gross Receipts

Tax Act of 1991, shall expire on June 30, 1993. The subchapter was derived from Acts 1991, No. 889, § 1.

SUBCHAPTER 12 — MEDICAID PROVIDER EXCISE TAX

SECTION.

26-52-1201 — 26-52-1209. [Repealed.]

26-52-1201 — 26-52-1209. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1993, No. 794, § 7. The subchapter was derived from the following sources:

- 26-52-1201. Acts 1991, No. 1004, § 1.
- 26-52-1202. Acts 1991, No. 1004, § 2.
- 26-52-1203. Acts 1991, No. 1004, § 3.

- 26-52-1204. Acts 1991, No. 1004, § 4.
- 26-52-1205. Acts 1991, No. 1004, § 5.
- 26-52-1206. Acts 1991, No. 1004, § 6.
- 26-52-1207. Acts 1991, No. 1004, § 7.
- 26-52-1208. Acts 1991, No. 1004, § 8.
- 26-52-1209. Acts 1991, No. 1004, § 9.

SUBCHAPTER 13 — PERSONAL CARE SERVICES EXCISE TAX

SECTION.

26-52-1301 — 26-52-1308. [Repealed.]

26-52-1301 — 26-52-1308. [Repealed.]

Publisher's Notes. This subchapter, scheduled to expire June 30, 1993, was repealed by Acts 1993, No. 794, § 7. The subchapter was derived from the following sources:

- 26-52-1301. Acts 1992 (1st Ex. Sess.), No. 74, § 1.
- 26-52-1302. Acts 1992 (1st Ex. Sess.), No. 74, § 2.
- 26-52-1303. Acts 1992 (1st Ex. Sess.), No. 74, § 3.

- 26-52-1304. Acts 1992 (1st Ex. Sess.), No. 74, § 4.
- 26-52-1305. Acts 1992 (1st Ex. Sess.), No. 74, § 5.
- 26-52-1306. Acts 1992 (1st Ex. Sess.), No. 74, § 6.
- 26-52-1307. Acts 1992 (1st Ex. Sess.), No. 74, § 7.
- 26-52-1308. Acts 1992 (1st Ex. Sess.), No. 74, § 8.

SUBCHAPTER 14 — HOME HEALTH AND PERSONAL CARE SERVICES TAX

SECTION.

26-52-1401 — 26-52-1406. [Repealed.]

26-52-1401 — 26-52-1406. [Repealed.]

Publisher's Notes. This subchapter, concerning home health and personal care services tax, was repealed by Acts 1995,

No. 794, § 4. The subchapter was derived from the following sources:
26-52-1401. Acts 1992 (2nd Ex. Sess.),

No. 4, § 1; 1993, No. 794, §§ 1, 2.	26-52-1404. Acts 1992 (2nd Ex. Sess.),
26-52-1402. Acts 1992 (2nd Ex. Sess.),	No. 4, §§ 3, 4.
No. 4, §§ 2, 5; 1993, No. 794, § 3.	26-52-1405. Acts 1992 (2nd Ex. Sess.),
26-52-1403. Acts 1992 (2nd Ex. Sess.),	No. 4, § 7.
No. 4, § 4.	26-52-1406. Acts 1993, No. 794, § 4.

SUBCHAPTER 15 — BINGO GAMES

SECTION.
26-52-1501 — 26-52-1507. [Repealed.]

26-52-1501 — 26-52-1507. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1999, No. 1152, § 1. The subchapter was derived from the following sources:	26-52-1503. Acts 1993, No. 939, § 3.
26-52-1501. Acts 1993, No. 939, § 1.	26-52-1504. Acts 1993, No. 939, § 4.
26-52-1502. Acts 1993, No. 939, § 2.	26-52-1505. Acts 1993, No. 939, § 5.
	26-52-1506. Acts 1993, No. 939, § 6.
	26-52-1507. Acts 1993, No. 939, § 7.

SUBCHAPTER 16 — ARKANSAS SALES TAX ADVISORY COMMITTEE

SECTION.
26-52-1601 — 26-52-1602. [Expired.]

26-52-1601 — 26-52-1602. [Expired.]

Publisher's Notes. This subchapter expired December 31, 2000, pursuant to Acts 1999, No. 623, § 3, which provided: "The provisions of this act will expire on December 31, 2000."	The subchapter was derived from the following sources:
	26-52-1601. Acts 1999, No. 623, § 1.
	26-52-1602. Acts 1999, No. 623, § 2.

CHAPTER 53
COMPENSATING OR USE TAXES

- SUBCHAPTER.
1. ARKANSAS COMPENSATING TAX ACT OF 1949.
 2. CONTRACTORS.
 3. INTERSTATE RECIPROCAL AGREEMENTS.

RESEARCH REFERENCES

A.L.R. Sales and use taxes on leased tangible personal property. 2 A.L.R.4th 859.	meaning of statute exempting from sales and use taxes equipment directly used in production of tangible personal property. 3 A.L.R.4th 1129.
Transportation, freight, mailing, or handling charges billed separately to purchaser of goods as subject to sales or use taxes. 2 A.L.R.4th 1124.	Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement. 8 A.L.R.4th 1068.
What constitutes a direct use within	

Applicability of sales or use taxes to motion pictures and video tapes. 10 A.L.R.4th 1209.

Eyeglasses or other optical accessories as subject to sales or use tax. 14 A.L.R.4th 1370.

Exemption, from sales or use tax, of water, oil, gas, other fuel, or electricity provided for residential purposes. 15 A.L.R.4th 269.

What constitutes newspapers, magazines, periodicals, or the like, under sales or use tax law exemption. 25 A.L.R.4th 750.

Provisions allowing use tax credit for

tax paid in other state. 31 A.L.R.4th 1206.

Sales, use, or privilege tax on sales of, or revenues from sales of, advertising. 40 A.L.R.4th 1114.

Mining exemption to sales or use tax. 47 A.L.R.4th 1229.

Sales and use taxes on sale or lease of mailing or customer list. 80 A.L.R.4th 1126.

Architectural drawings or illustrations as exempt from sales or use tax. 27 A.L.R.5th 794.

Am. Jur. 68 Am. Jur. 2d, Sales Tax., § 1 et seq.

C.J.S. 85 C.J.S., Tax. § 1231 et seq.

SUBCHAPTER 1 — ARKANSAS COMPENSATING TAX ACT OF 1949

SECTION.

- 26-53-101. Title.
- 26-53-102. Definitions.
- 26-53-103. Administration of subchapter.
- 26-53-104. Rules and regulations — Forms.
- 26-53-105. Sales and Use Tax Section.
- 26-53-106. Imposition and rate of tax generally — Presumptions.
- 26-53-107. Additional taxes levied.
- 26-53-108. Imposition and rate of tax on certain personal property.
- 26-53-109. Tax on use, storage, or distribution of computer software.
- 26-53-110. Financial institutions.
- 26-53-111. Deduction for bad debts.
- 26-53-112. Exemptions generally.
- 26-53-113. Exemption for unprocessed crude oil.
- 26-53-114. Exemption for certain machinery and equipment.
- 26-53-115. Exemption for certain aircraft and railroad cars, parts, and equipment.
- 26-53-116. Exemption for sale and purchase of certain vessels.
- 26-53-117. Exemption for motor fuels used in municipal buses — Penalties for abuse of exemption.
- 26-53-118. Exemption for modular homes.
- 26-53-119. Exemption for sale of products for treating livestock and poultry and other commer-

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- cial agricultural production.
- 26-53-120. Feedstuffs used for livestock.
- 26-53-121. Registration of vendors — Out-of-state vendors.
- 26-53-122. Agents furnished statements of compliance.
- 26-53-123. Liability for tax.
- 26-53-124. Collection of tax by vendor.
- 26-53-125. Return and payment of tax.
- 26-53-126. Tax on new and used motor vehicles, trailers, or semi-trailers — Payment and collection.
- 26-53-127. Refunds to governmental agencies.
- 26-53-128. Tax — A lien upon property.
- 26-53-129. Suits for violations of subchapter — Agent for service.
- 26-53-130. Exemption for aircraft and railroad equipment in state for refurbishing, etc.
- 26-53-131. Credit for tax paid in another state.
- 26-53-132. Refund for construction of child care facility.
- 26-53-133. Exemption for manufacturing forms.
- 26-53-134. Exemption for natural gas used in manufacture of glass.
- 26-53-135. Exemption for sales to Fort Smith Clearinghouse.
- 26-53-136. Exemption for nonprofit food distribution agencies.

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- 26-53-137. Exemption for railroad rolling stock manufactured for use in interstate commerce.
- 26-53-138. Exemption for property purchased for use in performance of construction contract.
- 26-53-139. Exemption for railroad parts, cars, and equipment.
- 26-53-140. Tax levied on sales of prepaid telephone calling cards.
- 26-53-141. Durable medical equipment, mobility-enhancing equipment, prosthetic devices,

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- and disposable medical supplies.
- 26-53-142. Fire protection equipment and emergency equipment.
- 26-53-143. Wall and floor tile manufacturers.
- 26-53-144. Certain classes of trucks or trailers.
- 26-53-145. Food and food ingredients.
- 26-53-146. Exemption for qualified museums.
- 26-53-147. Heavy equipment.
- 26-53-148. Natural gas and electricity used by manufacturers.

A.C.R.C. Notes. Acts 2007, No. 185, § 3, provided: "All existing exemptions from the gross receipts tax levied by the Arkansas Gross Receipts Act or 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., for natural gas or electricity used in manufacturing or other purposes that are otherwise provided by law shall continue in full force and effect."

Cross References. Sales and use tax, § 26-74-601 et seq.

Preambles. Acts 1979, No. 449 contained a preamble which read: "Whereas, the levy of sales and use taxes upon towboats, barges and the repair and construction of the same results in an undue hardship on Arkansas purchasers and Arkansas vendors of towboats and barges; and

"Whereas, adjoining states exempt barges and towboats from sales and use taxes resulting in Arkansas vendors and purchasers having a competitive disadvantage; and

"Whereas, this bill would merely put Arkansas towboat and barge vendors and purchasers on an equal footing with competitors in adjoining states; and

"Whereas, the result of this Act would be to boost the economy in this particular industry with the probable result of increased production and sales and increased tax collections resulting from the economic boost to this industry;

"Now, therefore"

Effective Dates. Acts 1949, No. 487,

§ 31: Mar. 30, 1949. Emergency clause provided: "Since the enactment of the Arkansas Retail Sales Tax Act, Arkansas has been placed in the peculiar category of discriminating against its home merchants. This Act attempts to rectify the evil by placing domestic merchants upon an equal plane with foreign merchants. It is also recognized that adequate hospital facilities, old age pension payments and welfare assistance to the aged and distressed are essential for the preservation of the public health and welfare; and that adequate school facilities are vital to the preservation of our democratic system of government, and because of such necessities an emergency is declared to exist and this Act being necessary for the immediate preservation of the public health, peace and safety, shall take effect and be in full force and effect from and after its passage and approval."

Acts 1955, No. 55, § 2: Feb. 14, 1955. Emergency clause provided: "It is hereby determined by the General Assembly that the imposition of the Compensating Tax upon the ginners of cotton in this State is unfair and burdensome and discourages the expansion of existing cotton ginning plants at this time when the development of such facilities is an economic necessity. Therefore, an emergency is hereby declared to exist and this Act being necessary for the protection of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1955, No. 94, § 8: Feb. 22, 1955. Emergency clause provided: "It has been

found and is determined by the General Assembly of Arkansas that the Gross Receipts Tax and the Compensating Tax Act as now levied and collected works undue hardships and competition upon the many livestock and poultry growers of this State, and the passage of this Act will eliminate this situation and thereby work to the welfare of the public at large; therefore, it being necessary for the preservation of the public peace, health and safety of the State, an emergency is hereby declared and this act shall be in full force and effect from and after its approval."

Acts 1957, No. 19, § 6: Feb. 7, 1957. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas (1) that inflationary prices are having the effect of curtailing the activities of certain necessary agencies of the State Government, including the State Hospital and other eleemosynary institutions, and the University of Arkansas and the other state-supported institutions of higher learning, the Public School System, the Public Welfare Program, and others; (2) that a minimum program of operation of the said state agencies and activities requires a large amount of state funds in excess of the amounts estimated to be available under existing revenue laws; (3) that to fail to provide additional funds will have the effect of further curtailing the activities of said agencies and programs to the great detriment to all of the people of this State; and (4) that only the provisions of this act will provide funds in amounts sufficient to alleviate the aforementioned conditions. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1957, No. 141, § 2: Mar. 4, 1957. Emergency clause provided: "It is hereby determined by the General Assembly that the attempted imposition of the Compensating Tax upon the artificial drying of rice in this State is unfair and burdensome and discourages the expansion of existing commercial drying plants at this time when the development of such facilities is an economic and agricultural necessity. Therefore, an emergency is hereby declared to exist and this act, being necessary for the protection of the public

peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1961, No. 43, § 3: Feb. 6, 1961. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of legislative oversight the definition of the term 'person' as contained in the Compensating Tax Act permits exemptions of certain governmental units from the payment of said tax which is not permitted in the Sales Tax Law, and that as a result thereof the State of Arkansas is losing revenues vitally needed for the support of the public schools and other vital services of this State; and that only by the immediate passage of this Act may this situation be corrected. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1961, No. 140, § 3: Feb. 22, 1961. Emergency clause provided: "It is found and declared by the General Assembly that there is need for additional revenue for the adequate operation of the various state agencies and institutions; and to determine in advance that adequate funds will be made available, as only in this Act provided. It is hereby declared necessary for the preservation of public peace, health and safety that this Act shall take effect and be in force immediately. Therefore, an emergency is hereby declared to exist, and this Act, being necessary for the preservation of the public peace, health, and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1967, No. 113, § 5: Feb. 20, 1967. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that certain exemptions in the sales tax and use tax to encourage capital investment in industrial, utility and manufacturing enterprises will be of great value to the economic and industrial development of the State; that it is important for such purposes and to correct inequities now existing that exemptions in the sales tax be identical to those of the use tax and that enactment of this bill will accomplish these purposes and aims. Therefore, an emergency is declared to exist, and this

Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after the date of its approval."

Acts 1968 (1st Ex. Sess.), No. 5, § 5: Feb. 15, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly of this State that the 'manufacturing and processing' exemptions in certain statutes of this State are confusing and difficult to administer and enforce; that revenues are being lost as a result thereof; that such confusion and loss of revenues have created an emergency, which emergency is hereby found and declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, welfare, and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 600, § 6: Apr. 7, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the maintenance and operation of economical mass transportation for the general public is essential to the public welfare, that the owners and/or operators of motor buses on designated streets according to regular schedules under franchise from municipalities in this State are in dire circumstances thereby jeopardizing the efficient and economical mass transportation of the public, and that the immediate passage of this Act is necessary to provide financial relief to the operation of mass transit facilities in municipalities in this State. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 68, § 6: Feb. 6, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the levy of the Arkansas Gross Receipts Tax and the Arkansas Compensating Tax upon agricultural fertilizers, agricultural limestone, agricultural chemicals, and upon vaccines, medication, and medicinal preparations used in treating livestock and poultry, places a severe hardship upon the agricultural industry of this State and that this Act should be given effect immediately in order to remedy this inequitable situation. Therefore, an emergency is hereby de-

clared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 182, §§ 9, 10: Jan. 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relative to the taxation of banks and savings and loan associations is somewhat vague and indefinite, that such institutions should pay the same taxes as other business corporations in the State, and this Act is immediately necessary to clarify the laws with respect to the taxation of financial institutions and to assure that such institutions pay the same taxes as other business corporations. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved Feb. 22, 1973.

Acts 1975, No. 760, § 5: Apr. 7, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that uncertainty exists to the intended meanings of the terms 'manufacturing' and/or 'processing' as the same are used in Section 4 of the Arkansas Gross Receipts Act, as amended, and Section 6 of the Arkansas Compensating Tax Act, as amended, as a result of which the legislative intent is not being carried out and implemented; that the failure to carry out the legislative intent expressed in the sections amended herein is highly detrimental to the public interest of the State and that this inequitable situation should be corrected immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975 (Extended Sess., 1976), No. 1237, § 5: Feb. 16, 1976. Emergency clause provided: "It is hereby found and determined by the General Assembly that it was not the intent of Act 487 of 1949, as amended, to impose the compensating use tax upon aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to tangible personal property owned or leased by aircraft, airmotive or railroad companies, brought into this State solely

and exclusively for (i) the purpose of refurbishing, conversion, or modification or (ii) for storage pending shipment for use outside the State of Arkansas regardless of the length of time any such property is so stored in the State of Arkansas; that recent court decisions have construed said Act 487 of 1949, as amended, to impose and require the collection and payment of compensating use taxes upon such property; and that the immediate passage of this Act is necessary to clarify the legislative intent and to provide that any claim the State of Arkansas may now have outstanding, or which is due the State of Arkansas as a result of the court decisions for the collection of any such compensating use tax upon aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to tangible personal property owned or leased by any aircraft, airmotive or railroad companies, brought into this State (i) solely and exclusively for the purpose of refurbishing, conversion, or modification, or (ii) for storage pending shipment for use outside the State of Arkansas regardless of the length of time any such property is so stored in the State of Arkansas, shall not be enforced, thereby correcting this inequity which was not intended by the General Assembly. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 449, § 3: Mar. 21, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the levy of the Arkansas Sales and Use Taxes on towboats and barges has resulted in an inequitable taxation of Arkansas vendors and purchasers, that surrounding states exempt such items from their sales and use tax, and that the Arkansas vendors and purchasers have thereby been placed in an unfavorable position in the competitive market place, and that this Act is immediately necessary to provide relief from this inequity. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 915, § 6: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly that there is some doubt regarding the correct dates for the reporting and payment of the Arkansas gross receipts and compensating use taxes; that there is also some confusion as to whether the Gross Receipts Tax should be computed on the basis of the total combined gross receipts or gross proceeds derived by the taxpayer from all taxable sales during the month or upon the gross receipts or gross proceeds derived from each separate sale, and not upon any figure for gross receipts tax collected that may appear on taxpayer's books of account, and that this Act is designed to clarify this matter by specifically providing that the tax is computed upon the total receipts for the month from all taxable sales and not upon the gross receipts derived from each sale; nor upon any figure for gross receipts tax collected that may appear on taxpayer's books of account; that the effectiveness of this Act on July 1, 1979, is essential to the efficient collection of revenues for the State's operations and that in the event of an extension of the regular session, delay in effective date of this Act beyond July 1, 1979, could work irreparable harm upon the proper collection of essential revenues for the State's operations. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1979."

Acts 1983, No. 791, § 6: Mar. 24, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the taxpayers of the State of Arkansas will be burdened in a manner not intended by this General Assembly; therefore, an emergency is therefore declared to exist and, this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its date of passage and approval."

Acts 1983, No. 829, § 2: Mar. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Supreme Court has held that Act 487 of 1949 does not contain a 'withdrawal for use' provision comparable to the Arkansas Gross Re-

ceipts Tax Act and therefore there exists a discriminatory tax advantage to a person who owns tangible personal property outside of this State and subsequently transfers same into this State for consumption or use and that immediate passage of this Act is necessary to correct this inequity. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1983 (1st Ex. Sess.), No. 63, § 3: Nov. 1, 1983. Emergency clause provided: "It is hereby found and determined by the 74th General Assembly that the Arkansas Supreme Court has held that the current method of allocating State financial aid to public elementary and secondary education is unconstitutional and must be revised to meet constitutional standards; that reallocation of existing State financial aid would cause massive disruption of the system of public elementary and secondary education in this State; that the current level of State financial aid to public elementary and secondary education is inadequate to meet the mandate of Article 14 of the Arkansas Constitution that the State maintain a general, suitable and efficient system of free public schools; that experienced faculty members at the institutions of higher education are leaving the State of Arkansas because salary levels in Arkansas are not competitive with salaries in institutions of higher education in other states; that accreditation of certain essential programs operated by various institutions of higher education is in jeopardy because of inadequate financial support; that the present level of funding for essential State services will cause the curtailing of activities of necessary State agencies; that additional State revenues are required to alleviate these conditions. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect November 1, 1983."

Acts 1983 (1st Ex. Sess.), No. 94, § 3: Nov. 9, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that a deduction for bad debts should be allowed under Arkansas' sales tax laws; that such deduction is not authorized by law and therefore the

present law is inequitable and fundamentally unfair to that extent; that this Act should go into effect immediately to correct such inequity. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 27, § 4: Feb. 11, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that in-state sellers of property and services are being discriminated against as a result of out-of-state vendors, who solicit sales by advertisements, not being required to collect and pay to the State compensating (use) tax upon such sales; that, as a result of the foregoing, this State is being deprived of much-needed revenue to which it is rightfully entitled; that providers of interstate telecommunication services have not been required to collect and remit gross receipts tax on interstate access and long distance telecommunications services which are hereby declared to be subject to the gross receipts tax. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 772, § 5: Apr. 7, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31 [290 Ark. 100, 717 S.W.2d 488 (1986)], a question has arisen over the validity of Act 1237 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 911, § 3: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present law manufacturing and processing plants are exempt from paying the use tax on machinery and equipment required by law to be installed to prevent or reduce air or water pollution;

that the exemption apparently does not apply to cities or towns; that some cities are under government order to install such machinery and equipment; that cities should be extended the exemption to the same extent manufacturing and processing facilities enjoy the exemption; that until the exemption becomes effective, some cities will suffer extra financial hardships; and that this Act will immediately implement such exemption. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 395, § 6: Mar. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the provisions of Arkansas Code of 1987 Annotated § 26-53-101 et seq. do not specifically provide for allowance to be given to persons for similar taxes paid in other states; that the proper and effective administration of the compensating (use) tax will be greatly enhanced by the provisions of a reciprocal tax credit given by the State of Arkansas to purchasers who have previously paid a compensating tax in another state, provided that such other state offers the same tax credit to Arkansas purchasers for tangible personal property brought into the other state; that this act is immediately necessary in order to eliminate the possibility that Arkansas taxpayers will be subject to undue multiple taxation by other states due to the failure of the states' taxing authorities to equate the Arkansas Gross Receipts Tax to sales tax for purposes of allowing a reciprocal sales tax credit; that this act is also necessary to lessen the administrative burdens on taxpayers whose monthly gross receipts tax liability is relatively small in amount. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and welfare, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 817, § 6: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious need of additional revenue for the purpose of funding critical education pro-

grams and other essential services required by the citizens of the State and the provisions of this act are necessary to raise needed revenue. Therefore, an emergency is declared to exist in this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1989."

Acts 1989 (3rd Ex. Sess.), No. 9, § 5: Nov. 3, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that this state is losing sales and use tax revenues on new and used motor vehicles purchased by Arkansas residents from sellers in other states and that these revenues are essential to fund public education and other necessary services provided by State government and the loss of these funds if causing irreparable harm to this State. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 3, § 14: May 1, 1991. Emergency clause provided: "It is hereby found and determined that the State of Arkansas is lacking adequate funds to provide for the education of its citizens and for other essential services: that increased funds must be raised to adequately provide for those needs; that certain persons are assisting taxpayers in evading or defeating the payment or collection of lawfully imposed state taxes depriving the state of needed revenues and that this act is designed to provide the necessary revenues to the state sufficient to meet these needs. Therefore, an emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective on and after May 1, 1991."

Acts 1991, No. 688, § 10: Mar. 21, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that some taxpayers are not properly completing and timely filing tax returns; that these failures create an administrative burden upon the Department of Finance and Administration; and that this act is designed to impose a fifty dollar (\$50) penalty for failure to timely file returns, even if no tax is due, or if returns are not properly completed.

Therefore, an emergency is hereby declared to exist and this act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, Nos. 820 and 987, § 9: Apr. 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of this state that unemployment and economic underdevelopment has reached intolerable levels in certain portions of this state and the state as a whole has been unable to compete with other state's incentive programs for economic development, and, that the incentives afforded by this Act are critical to the development and expansion of job opportunities in the state. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1001, § 5: emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present law certain Arkansas businesses are put at an unfair advantage against out of state businesses due to the 'forms' used by the business being subjected to the state sales tax; that substantial employment opportunity is jeopardized in the state unless the relief provided by this act is granted immediately; that this act should go into effect as soon as possible in order to protect the employment opportunities within this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1144, § 5: Apr. 14, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that non-profit agencies distributing free food-stuffs contribute immeasurably to the general well being of the poor and needy individuals in this state; that these organizations are non-profit organizations and that it is in the best interest of all the citizens of this State that such organizations be granted appropriate incentives to continue their outstanding work; and that this act is necessary to provide such incentive and allow these organizations to continue their work by

exempting purchases by such organizations from the Arkansas gross receipts tax and should be given effect immediately. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 268, § 11: Feb. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that current law imposes a 10% penalty on late payment of sales or use tax on motor vehicles and trailers; that current law disallows the isolated sales exemption to a purchase of a motor vehicle or trailer; that each of these provisions are in need of clarification to ensure the original legislative intent is fulfilled; and that Sections 6 and 7 of this act should be effective immediately to prevent possible confusion among the taxpayers of this state. Therefore, an emergency is hereby declared to exist and Sections 6 and 7 of this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect immediately upon its passage and approval."

Acts 1995, No. 358, § 6: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that vendors in the ordinary course of business have relied to their detriment by accepting resale certificates from purchasers in good faith, only to later incur tax liability if the property purchased was not resold by the purchaser; that the purchaser in most cases will be in the best position to determine whether the resale exemption is valid but current law does not permit recourse against the purchaser if the property purchased is not in fact resold; and that the practicalities of business require that vendors be permitted to relieve themselves of tax liability upon good faith acceptance of a resale certificate and this act is designed to afford such relief. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1995, No. 387, § 7: approved Feb. 20, 1995. Emergency clause provided: "It

is hereby found and determined by the General Assembly that the application of any additional Gross Receipts or Compensating (Use) Tax levied by the state or any city or county to tangible personal property purchased for the performance of construction contracts entered into prior to the effective date of the tax increase will substantially increase the cost of performing contracts; that contractors are not able to include the additional tax in their contract price at the time the contract is entered into and, therefore, imposition of the tax to purchases of construction contractors would cause undue hardship. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1995, No. 848, § 7: Mar. 31, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the General Assembly has previously passed Act 1237 of 1975 and Act 983 of 1981 to exempt railroad parts, railroad cars and equipment and the repair and maintenance of such railroad parts, railroad cars and equipment from Arkansas Gross Receipts and Compensating Use Tax; that on January 1, 1987 the Arkansas Department of Finance and Administration issued new regulations which provide that parts, materials and supplies used in such repairs are still subject to tax; that Arkansas law specifically exempts parts and other tangible personal property incorporated into commercial jet aircraft and vessels, barges and towboats from tax; that a substantial number of Arkansans are employed in Arkansas facilities where such repairs are performed; and that these jobs are at risk due to the relocation of such repair facilities to other states which clearly exempt such parts, materials and supplies from tax. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 850, § 8: effective for taxable years beginning Jan. 1, 1995.

Acts 1995, No. 850, § 12: Mar. 31, 1995. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that the State of Arkansas is in serious need to provide for the health, welfare and education of the State's children by encouraging child care facilities to offer an 'appropriate early childhood program' and this Act is designed to meet that need by providing tax incentives to encourage construction of these facilities. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 951, § 34 provided: "Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time."

Acts 1997, No. 951, § 38: Mar. 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that current state tax laws are unclear or confusing, creating difficulty for taxpayers seeking to comply with these tax laws; that the changes made by Sections 25 through 31 of this bill are necessary to provide adequate direction to those taxpayers and to maintain the efficient administration of the Arkansas tax laws; and that the provisions of Sections 25 through 31 of this Act are necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and the provisions of Sections 25 through 31 of this Act being necessary for the preservation of the public peace, health, and safety

shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 25 through 31 shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 25 through 31 shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1232, § 5: Jan. 1, 1998.

Acts 1999, No. 1348, § 7: July 1, 1999.

Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that due to the inability to track and audit calls made with prepaid calling cards, the current system of collecting sales tax based upon the usage of prepaid calling cards creates an administrative burden on the telecommunication companies; that this act will promote uniform tax collection on prepaid calling cards; that this act will more fairly tax telecommunications and prevent the likelihood of taxes being avoided. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999."

Acts 1999, No. 1492, § 8: if contingency met, sections 1, 2, 3, 4 and 6 shall become effective on Jan. 1, 2001, and Section 7 shall become effective on Jan. 1, 2002. Effective date clause provided: "Effective Date. The provisions of Section 5 shall be effective 90 days after adjournment. The provisions of Sections 1, 2, 3, 4, 6 and 7 shall not be effective unless; a) the General Assembly refers a constitutional amendment to be approved during the 2000 general election; b) the amendment provides for a limitation on the increase in the assessed value of real property after a county-wide reappraisal; and c) the amendment is approved. If those conditions are met, Sections 1, 2, 3, 4 and 6 shall become effective on January 1, 2001, and Section 7 shall become effective on January 1, 2002. Claims for refund may be filed in 2001 pursuant to §§ 26-51-601 — 26-51-608 for property taxes paid during calendar year 2000 for property assessed in calendar year 1999."

Acts 2000 (2nd Ex. Sess.), Nos. 1 and 2, § 11. Dec. 15, 2000. Emergency clause provided: "It is found and determined by

the General Assembly of the State of Arkansas that Amendment 79 to the Arkansas Constitution requires the General Assembly to provide for a property tax credit of not less than \$300 for each homestead; that providing such a property tax credit results in a significant reduction in revenues for funding county services and public schools; that without an alternative source of funding counties and public schools cannot operate effectively; that an increase in the state sales and use tax provides a source of funding for counties and public schools; that this act will accomplish the purposes of Amendment 79 in providing a property tax credit and source of funding. It is necessary that this act become effective immediately in order to facilitate the administration of the property tax credit and to generate sufficient revenues to fully fund the credit. Therefore, an emergency is declared to exist and Sections 1, 2, 3, 4, 5, 6, 8 and 9 of this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 922, § 2: effective on and after Jan. 1, 2002.

Acts 2001, No. 1375, § 2: July 1, 2003. Effective date clause provided: "This act shall be effective on and after July 1, 2003."

Acts 2003, No. 365, § 3: Aug. 1, 2003. Effective date clause provided: "This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days."

Acts 2003, No. 551, § 3: May 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there are a substantial number of Arkansas truckers who have registered their trucks in the state of Oklahoma; that their Oklahoma registrations expire on March 31; that this

act will encourage those truckers to register their vehicles in the State of Arkansas; that unless this act goes into effect as soon as possible, that incentive will not exist for another year; and that the Department of Finance and Administration needs thirty (30) days lead time to implement this act. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on May 1, 2003."

Acts 2003, No. 664, § 5: Aug. 1, 2003. Effective date clause provided: "This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days."

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning

state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also [become] effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2003 (2nd Ex. Sess.), No. 107, § 12: became law without Governor's signature, Mar. 1, 2004. Emergency clause provided: "It is found and determined by the General Assembly, that the provision of an equal opportunity for an adequate education to all the citizens of the state is imperative; that additional funds are immediately needed to provide an equal opportunity for an adequate education; that this act is designed to provide the additional revenues needed to provide this equal opportunity to all citizens; and that

a delay in the effective date of this act will cause irreparable harm upon the provision of essential education opportunities and the proper administration of educational programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of March 1, 2004."

Acts 2005, No. 1693, § 3: July 1, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the payment of sales and use tax is required on the purchase of new or used heavy equipment; that Arkansas law provides that heavy equipment used in some types of professions or businesses is exempt from tax; that enforcement of the sales and use tax laws on heavy equipment is very difficult for the Department of Finance and Administration; that requiring a decal to be affixed to each piece of heavy equipment as proof that the tax has been paid or as proof that it is legally exempt would assist in the enforcement of the sales and use tax laws; and that this act would accomplish that purpose. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005."

Acts 2007, No. 110, § 9: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of Arkansas are having to pay more in fuel costs due to the rise in oil prices; that the rise in fuel costs has resulted in an increase in the price of food and other goods;

and that in order to offset these rising prices the sales and use tax rate on food and food ingredients should be reduced. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

Acts 2007, No. 140, § 5: Oct. 1, 2007. Effective date clause provided: "Sections 1-4 of this act are effective on the first day of this calendar quarter following the effective date of the act."

Acts 2007, No. 181, § 45: Jan. 1, 2008.

Acts 2007, No. 182, § 32: Jan. 1, 2008.

Acts 2007, No. 185, § 4: Mar. 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly that the current sales and use tax on utilities consumed by manufacturers located within this state creates a competitive disadvantage, that this bill is intended to address that problem by providing a reduced tax rate on utilities consumed by manufacturers located in this state; and that this act is immediately necessary to prevent the loss of manufacturing jobs to other states that provide lower taxes on utilities consumed in manufacturing. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 860, § 7: Jan. 1, 2008.

RESEARCH REFERENCES

Ark. L. Rev. Constitutional Law — Taxation — Compelled Collection of the Use Tax by Nonresident Vendors, 6 Ark. L. Rev. 227.

Compensating Use Taxes: Past and Present Constitutional Problems in Imposition and Collection, 18 Ark. L. Rev. 321.

Legislative and Judicial Dynamism in Arkansas: Poisson v. d'Avril, 22 Ark. L. Rev. 724.

U. Ark. Little Rock L.J. Jans, Survey of Constitutional Law, 3 U. Ark. Little Rock L.J. 184.

CASE NOTES

Cited: Boral Gypsum, Inc. v. Leathers, 325 Ark. 272, 924 S.W.2d 805 (1996); Acxiom Corp. v. Leathers, 331 Ark. 205, 961 S.W.2d 735 (1998).

26-53-101. Title.

The title of this subchapter shall be cited as the “Arkansas Compensating Tax Act of 1949”.

History. Acts 1949, No. 487, § 1; A.S.A. 1947, § 84-3101.

CASE NOTES

Cited: American Television Co. v. Hervey, 253 Ark. 1010, 490 S.W.2d 796 (1973); Jefferson Coop. Gin, Inc. v. Milam, 255 Ark. 479, 500 S.W.2d 932 (1973); C & C Mach., Inc. v. Ragland, 278 Ark. 629, 648 S.W.2d 61 (1983); Pledger v. Brunner & Lay, Inc., 308 Ark. 512, 825 S.W.2d 599 (1992).

26-53-102. Definitions.

As used in this subchapter:

(1) “Alcoholic beverage” means a beverage that is suitable for human consumption and contains five-tenths of one percent (0.5%) or more of alcohol by volume;

(2)(A) “Bundled transaction” means a retail sale of two (2) or more products, except real property and services to real property, in which:

- (i) The products are otherwise distinct and identifiable; and
- (ii) The products are sold for one (1) non-itemized price.

(B) “Bundled transaction” does not include the sale of any product in which the sales price varies or is negotiable based on the selection by the purchaser of the products included in the transaction.

(C) The Department of Finance and Administration shall promulgate rules to implement this subdivision (2);

(3) “Dietary supplement” means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one (1) or more of the following dietary ingredients:

- (i) A vitamin;
- (ii) A mineral;
- (iii) An herb or other botanical;
- (iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subdivision (3)(A) and is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as

conventional food and is not represented for use as a sole item of a meal or of the diet; and

(B) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36, as in effect on January 1, 2007;

(4) "Director" means the Director of the Department of Finance and Administration;

(5)(A) "Food" and "food ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(B) "Food" and "food ingredients" do not include an alcoholic beverage, tobacco, or a dietary supplement;

(6) "In this state" or "in the state" or "within this state" means within the exterior limits of the State of Arkansas and includes all territory within those limits owned by or ceded to the United States of America;

(7)(A) "Person" means any individual, partnership, limited liability company, limited liability partnership, joint venture, corporation, estate, trust, fiduciary, or any other legal entity.

(B) It is the purpose and intent of the General Assembly in passing this subdivision (7) to provide the same definition for the word "person" in this subchapter as that word is defined in the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the exclusion of any wording formerly appearing in the definition of the word "person" in this subchapter shall by no means be construed by the courts or by administrative officials as an intention of the General Assembly to grant any additional exclusion or exemption from the provisions of this subchapter;

(8) "Prepared food" means:

(A) Food sold in a heated state or heated by the seller;

(B) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(C)(i) Food sold with an eating utensil provided by the seller, including a plate, knife, fork, spoon, glass, cup, napkin, or straw.

(ii) As used in subdivision (8)(C)(i) of this section, "plate" does not include a container or packaging used to transport the food;

(9)(A) "Purchase" means the sale of tangible personal property or taxable services by a vendor to a person for the purpose of storage, use, distribution, or consumption in this state.

(B)(i) "Purchase" also includes any withdrawal of tangible personal property from a stock or reserve maintained outside of the state by any person and subsequently brought into this state and thereafter stored, consumed, distributed, or used by that person or by any other person.

(ii) In such an event, the tax shall be computed on the value of the tangible personal property at the time it is brought into this state.

(C) No tax shall be computed to the extent that a withdrawal consists of carbonaceous materials such as petroleum coke or carbon

anodes that are to be directly used or consumed in the electrolytic reduction process of producing tangible personal property for ultimate sale at retail;

(10) "Purchaser" means a person to whom a sale of tangible personal property is made or to whom a taxable service is furnished;

(11)(A) "Sale" means any transfer, barter, or exchange of the title or ownership of tangible personal property or taxable services or the right to use, store, distribute, or consume the tangible personal property or taxable services for a consideration paid or to be paid in installments or otherwise and includes any transaction whether called leases, rentals, bailments, loans, conditional sales, or otherwise, notwithstanding that the title or possession of the property, or both, is retained for security.

(B) For the purpose of this subchapter, the sale of tangible personal property or taxable services shall be sourced according to §§ 26-52-521, 26-52-522, and 26-52-523;

(12)(A) "Sales price" or "purchase price" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) A charge by the seller for any service necessary to complete the sale, other than a delivery or installation charge;

(iv) Delivery charge;

(v)(a) Installation charge.

(b) However, installation charges will not be included in the "sales price" if they are not a specifically taxable service under the Arkansas Gross Receipts Tax Act of 1941, § 26-52-101 et seq. or this subchapter and the installation charges have been separately stated on the invoice, billing, or similar document given to the purchaser;

(vi) The value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) Credit for any trade-in.

(B) "Sales price" or "purchase price" shall not include:

(i) A discount, including cash, term, or a coupon that is not reimbursed by a third party and that is allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(iii) Any tax legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(13) "Seller" means a person making a sale, lease, or rental of tangible personal property or services;

(14) "Storage" means any keeping or retention in this state of tangible personal property or taxable services purchased from a vendor for any purpose except sale or subsequent use solely outside this state;

(15)(A) "Tangible personal property" means personal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses.

(B) "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software;

(16) "Taxable service" means a service that is taxable under this subchapter or the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.;

(17) "Taxpayer" means any person remitting the tax or who should remit the tax or should have remitted the tax levied by this subchapter;

(18) "Tobacco" means a cigarette, cigar, chewing or pipe tobacco, or any other item that contains tobacco;

(19)(A) "Use", with respect to tangible personal property, means the exercise of any right or power over tangible personal property incident to the ownership or control of that tangible personal property except that it shall not include the sale of that tangible personal property in the regular course of business.

(B) With respect to a taxable service, "use" means the privilege of using the service, enjoyment of the service, or the first act within this state by which the purchaser takes or assumes dominion or control over the service or the article of tangible personal property upon which the service was performed; and

(20)(A)(i) "Vendor" means every person engaged in making sales of tangible personal property or taxable services by mail order, by advertising, or by agent, by peddling tangible personal property or taxable services, by soliciting, or by taking orders for such sales for storage, use, distribution, or consumption in this state.

(ii) "Vendor" includes all salespersons, solicitors, hawkers, representatives, consignees, peddlers, or canvassers as agents of the dealers, distributors, consignors, supervisors, principals, or employers under whom they operate or from whom they obtain the tangible personal property or taxable services sold by them.

(B) Regardless of whether a person is making sales on his or her own behalf or on behalf of dealers, distributors, consignors, supervisors, principals, or employers, the person must be regarded as a vendor, and the dealers, distributors, consignors, supervisors, principals, or employers must be regarded as vendors for purposes of this subchapter.

History. Acts 1949, No. 487, § 4; 1961, No. 43, §§ 1, 2; 1983, No. 829, § 1; 1985, No. 999, § 1; A.S.A. 1947, §§ 84-3104, 84-3104n; Acts 1995, No. 1160, § 22; 2003, No. 1273, § 12; 2007, No. 181, § 31.

Amendments. The 2003 amendment alphabetized the subdivisions; added present (7)(B)(i), (9)(B), (10) and 12(B); inserted “fidiucary” and “or any other legal entity” in (3)(A); rewrote present (6)(B); inserted “including cash ... third party” in (7)(A)(ii); inserted “distribution, or taxable services” and “taxable services or” throughout this section; and made stylistic and related changes.

The 2007 amendment added present (1), (2), (3), (8), (13), and (18) and redesignated subdivisions accordingly; and rewrote present (7)(A), (10), and (12).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the re-

quirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state’s proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

CASE NOTES

ANALYSIS

Person.
Purchase.
Sale.
Sales Price.
Tangible Personal Property.
Use.
Vendor.

Person.

The use tax was not intended to be applied to purchases made by a municipality, since the “persons” to be taxed were defined in the Sales Tax Act to include “corporations,” “cities” and “municipalities,” whereas in the Use Tax Act passed to complement the sales tax only “corporations” of these terms was set out in the

definition of "persons." *Scurlock v. Springdale*, 224 Ark. 408, 273 S.W.2d 551 (1954) (decision prior to 1961 amendment).

Since tax acts are construed in favor of the taxpayer, a court would not imply that the word "corporation" included "municipal corporation" in the definition of "persons" subject to the use tax. *Scurlock v. Springdale*, 224 Ark. 408, 273 S.W.2d 551 (1954) (decision prior to 1961 amendment).

Whereas definition of "person" as found in the Sales Tax Act specifically included this state, any county, city, municipality, school district, or any other political subdivision of the state, this section did not contain any such language; in failing to so define "person" the General Assembly thereby necessarily intended to exclude the state and its subdivisions from the Use Tax Act. *Commissioner of Revenues v. Arkansas State Hwy. Comm'n*, 232 Ark. 255, 337 S.W.2d 665 (1960) (decision prior to 1961 amendment).

Since the definition of "person" in the Use Tax Act did not specifically include the state or its subdivisions, it was not broad enough to apply to the State Highway Commission. *Commissioner of Revenues v. Arkansas State Hwy. Comm'n*, 232 Ark. 255, 337 S.W.2d 665 (1960) (decision prior to 1961 amendment).

Purchase.

To establish its claim that the repair parts were purchased for "resale," a taxpayer must show that the repair parts were purchased outside this state, that it is regularly engaged in the business of reselling the goods purchased, and that the parts were purchased for resale. *Federal Express Corp. v. Skelton*, 265 Ark. 187, 578 S.W.2d 1 (1979).

Where chlorine is used in the manufacture of bromine, the chlorine does not become a part of the bromine, but quite the opposite, the chlorine takes something from the bromine, becomes chloride, and is discarded as worthless; thus it is at best consumed in the manufacturing process, not resold to the purchaser as tangible property, and is subject to the use tax. *Great Lakes Chem. Corp. v. Wooten*, 266 Ark. 511, 587 S.W.2d 220 (1979).

Sale.

Out-of-state corporation that solicits orders for sale in Arkansas through travel-

ing salesmen is liable for use tax on sales though sales are subject to approval of office of corporation located out of state. *Thompson v. Rhodes-Jennings Furn. Co.*, 223 Ark. 705, 268 S.W.2d 376 (1954), cert. denied, 348 U.S. 872, 75 S. Ct. 108, 99 L. Ed. 686 (1954).

Out-of-state corporation that authorized its salesmen to enter into written contracts with residents of Arkansas for sale of merchandise and also required maintenance of salesroom in Arkansas, plus on the spot service and inspection of machinery sold, was liable for use tax. *Thompson v. Rhodes-Jennings Furn. Co.*, 223 Ark. 705, 268 S.W.2d 376 (1954), cert. denied, 348 U.S. 872, 75 S. Ct. 108, 99 L. Ed. 686 (1954).

Where agents of company representing numerous magazine publishers recruited students to sell magazine subscriptions, and the students after making their sales sent the checks and money collected to a clearing house designated by the company, the company made "sales" of the magazine subscriptions within the meaning of subdivision (11) of this section. *Ragland v. Quality School Plan, Inc.*, 279 Ark. 256, 651 S.W.2d 447 (1983).

Sales Price.

If a general contractor purchases a precast concrete component, the tax due is based upon the price of that component; however, if a general contractor purchases the raw materials and produces the component from those raw materials, it is taxed only on the price paid for the raw materials. *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992), cert. denied, 506 U.S. 826, 113 S. Ct. 82, 121 L. Ed. 2d 46 (1992).

Because services that are part of the sale are not to be excluded in the use tax assessment, the professional skills and labor of an advertising agency are necessarily included in the costs of advertising materials. *Pledger v. Baldor Int'l, Inc.*, 309 Ark. 30, 827 S.W.2d 646 (1992).

Tangible Personal Property.

A magazine subscription is "tangible personal property" within the meaning of subdivision (15) of this section. *Ragland v. Quality School Plan, Inc.*, 279 Ark. 256, 651 S.W.2d 447 (1983).

Precast concrete components, large, specially designed and constructed pieces

of concrete, were tangible personal property and not real property at the time they were transported to a jobsite. *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992), cert. denied, 506 U.S. 826, 113 S. Ct. 82, 121 L. Ed. 2d 46 (1992).

Use.

Under the statutory definition, the right to use property cannot be separated from the property itself. *American Television Co. v. Hervey*, 253 Ark. 1010, 490 S.W.2d 796 (1973).

Where aircraft belonging to interstate air freight carrier were retained in the

state for approximately 50 days to receive extensive modifications, the aircraft were subject to the compensating tax, even though ultimate use of the aircraft was in the carrier's interstate system. *Skelton v. Federal Express Corp.*, 259 Ark. 127, 531 S.W.2d 941 (1976) (decision prior to 1976 amendment of § 26-53-115).

Vendor.

The definition of a "vendor" in this section is quite inclusive, and a sale cannot be made in Arkansas without someone being the vendor. *Ragland v. Quality School Plan, Inc.*, 279 Ark. 256, 651 S.W.2d 447 (1983).

26-53-103. Administration of subchapter.

(a) The administration of this subchapter is vested in and shall be exercised by the Director of the Department of Finance and Administration.

(b) The administration cost of this subchapter shall not exceed three percent (3%) of the actual revenues collected.

History. Acts 1949, No. 487, §§ 3, 28; A.S.A. 1947, §§ 84-3103, 84-3128.

CASE NOTES

Cited: *American Television Co. v. Hervey*, 253 Ark. 1010, 490 S.W.2d 796 (1973).

26-53-104. Rules and regulations — Forms.

(a) The Director of the Department of Finance and Administration shall promulgate rules and regulations and prescribe forms for the proper enforcement of this subchapter.

(b)(1) The rules, regulations, and forms shall be dated and issued under a systematic method of numbering, and copies shall be made available to any person requesting them.

(2) A complete file of all the rules, regulations, and forms shall be kept in the office of the director.

History. Acts 1949, No. 487, § 3; A.S.A. 1947, § 84-3103.

CASE NOTES

Cited: *American Television Co. v. Hervey*, 253 Ark. 1010, 490 S.W.2d 796 (1973).

26-53-105. Sales and Use Tax Section.

The Director of the Department of Finance and Administration shall create within the Revenue Division of the Department of Finance and Administration the Sales and Use Tax Section for the collection, enforcement, and administration of the tax levied by this subchapter.

History. Acts 1949, No. 487, § 2; A.S.A. 1947, § 84-3102.

CASE NOTES

Cited: American Television Co. v. Hervey, 253 Ark. 1010, 490 S.W.2d 796 (1973).

26-53-106. Imposition and rate of tax generally — Presumptions.

(a) There is levied and there shall be collected from every person in this state a tax or excise for the privilege of storing, using, distributing, or consuming within this state any article of tangible personal property or taxable service purchased for storage, use, distribution, or consumption in this state at the rate of three percent (3%) of the sales price of the property except for food and food ingredients that are taxed under § 26-53-145.

(b) This tax will not apply with respect to the storage, use, distribution, or consumption of any article of tangible personal property purchased, produced, or manufactured outside this state until the transportation of the article of tangible personal property has finally come to rest within this state or until the article of tangible personal property has become commingled with the general mass of property of this state.

(c) This tax shall apply to use, storage, distribution, or consumption of every article of tangible personal property or taxable service except as provided in this subchapter irrespective of whether the article of tangible personal property or similar articles of tangible personal property are manufactured within the State of Arkansas or are available for purchase within the State of Arkansas and irrespective of any other condition.

(d)(1)(A) For the purpose of the proper administration of this subchapter and to prevent evasion of the tax and the duty to collect the tax imposed in this section, it shall be presumed that tangible personal property or taxable services sold by any vendor for delivery in this state or transportation to this state are sold for storage, use, distribution, or consumption in this state unless the vendor selling the tangible personal property or taxable service has taken from the purchaser a resale certificate signed by and bearing the name, address, and sales tax permit number of the purchaser certifying that the property or taxable service was purchased for resale, except that sales made electronically will not require the purchaser's signature.

(B) The use by the purchaser of a resale certificate and any resulting liability for, or exemption from, use tax in a transaction involving a resale certificate shall be governed in all respects by the terms of § 26-52-517.

(2) It is further presumed that tangible personal property or taxable services shipped, mailed, expressed, transported, or brought to this state by the purchaser were purchased from a vendor for storage, use, distribution, or consumption in this state.

History. Acts 1949, No. 487, §§ 5, 10; 1957, No. 19, § 2; 1959, No. 260, § 2; 1975 (Extended Sess., 1976), No. 1237, § 1; A.S.A. 1947, §§ 84-3105, 84-3110; reen. Acts 1987, No. 772, § 1; Acts 1989, No. 817, § 1; 1995, No. 358, § 2; 2003, No. 1273, §§ 13-16; 2007, No. 110, § 5.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 772, § 1. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Publisher's Notes. By Acts 1993, No. 1237, § 1, the General Assembly amended § 26-53-106 to add (e); however, the language is already codified in § 26-53-115, and the 1993 amendment made only minor stylistic changes; § 1 provided: "(e) Provided, however, that the tax levied in this act shall not apply to aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to tangible personal property owned or leased by aircraft, airmotive or railroad companies brought into the state of Arkansas solely and exclusively for (i) refurbishing, conversion or modification within this state and is not used or intended for use in this state, and the presence of such tangible personal property within this state shall not be construed as storage, use, or consumption in this state for the purpose of this act, if such aircraft, aircraft equipment, and railroad parts, cars, and equipment, or tangible personal property is removed from this state within sixty (60) days from the date of the completion of such refurbishing, conversion, or modification, or (ii) storage for use outside or inside the state of Arkansas regardless of the length of time any such property is so stored in the state of Arkansas. If any such property is subsequently initially used in the state of Arkansas, the tax levied by this act shall

be and become applicable to the property so used in Arkansas. Provided, further, that nothing in this subsection is intended to exempt from taxation any materials used or services furnished in the refurbishing, conversion, or modification of such property in this state which is subject to the Arkansas Gross Receipts Tax."

Amendments. The 2003 amendment inserted "or taxable service" in (a), (c) and twice in (d)(1)(A); in (d)(1)(A), inserted "or taxable services" and added "except that sales made electronically will not require the purchaser's signature" following "resale"; and inserted "or taxable services" in (d)(2).

The 2007 amendment added "except for food and food ingredients which are taxed under § 26-53-145" at the end of (a).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the

Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and

Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw, Tax Law, 25 U. Ark. Little Rock L. Rev. 1036.

CASE NOTES

ANALYSIS

Constitutionality.
Applicability.
Catalogue Sales.
Not Subject to Tax.
Sales Price.
Subject to Tax.

Constitutionality.

Use tax is not a tax on property; hence it does not violate Ark. Const., Art. 16, § 5, requiring all property taxes to be equal and uniform. *Morley v. E.E. Barber Constr. Co.*, 220 Ark. 485, 248 S.W.2d 689 (1952).

Subdivision (d)(2) of this section recognizes constitutional limitation of a state's imposition of a tax on goods in interstate transit; if goods have not "come to rest" within state, they are still in stream of interstate commerce, and tax may not be levied. *Martin v. Riverside Furniture Corp.*, 292 Ark. 399, 730 S.W.2d 483 (1987).

Materials did "finally come to rest" in Arkansas within the meaning of this section and were not exempted from use tax. *Martin v. Riverside Furniture Corp.*, 292 Ark. 399, 730 S.W.2d 483 (1987).

Where the Revenue Division imposed both the sales and use taxes upon the price of the concrete components regardless of whether they were precast within or without the state, there was equal treatment for similarly situated in-state and out-of-state taxpayers in the imposition of the taxes, and as a result, there was no violation of the commerce clause. *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992), cert. denied, 506 U.S. 826, 113 S. Ct. 82, 121 L. Ed. 2d 46 (1992).

Applicability.

This section operates retrospectively to include within its operation only those delinquent taxpayers who have failed and refused to pay the tax, those who have paid the tax are excluded from the operation of the law simply because they paid the tax; thus, the exclusion of those persons who were attempting to comply with the law at the time the tax matured, in effect, penalizes them because of their compliance. *Federal Express Corp. v. Skelton*, 265 Ark. 187, 578 S.W.2d 1 (1979).

Under subsection (b) of this section, there was no intention for consumption of

a product to be the equivalent of its coming to rest; rather, the statute contemplated that property had to first come to rest before it was consumed in order for it to be taxable. *Mississippi River Transmission Corp. v. Weiss*, 347 Ark. 543, 65 S.W.3d 867 (2002).

Catalogue Sales.

Where no agency relationship existed between out-of-state mail order school book company and Arkansas teachers, the company's sales of books in Arkansas were not subject to a vendor's use tax. *Pledger v. Troll Book Clubs, Inc.*, 316 Ark. 195, 871 S.W.2d 389 (1994).

Not Subject to Tax.

Importation by corporation of paneling manufactured in a plant owned by the corporation outside the state and the use thereof in remodeling the offices of the corporation located in Arkansas was not subject to use tax. *Georgia Pac. Corp. v. Larey*, 242 Ark. 428, 413 S.W.2d 868 (1967).

This subchapter did not apply to a manufacturer who purchased compressor fuel where the transfer of ownership as well as the right to use the compressor fuel occurred in Oklahoma. *Boral Gypsum, Inc. v. Leathers*, 325 Ark. 272, 924 S.W.2d 805 (1996).

This subchapter does not support taxing sheetrock manufacturer for purchase of out-of-state diverted natural gas, known as "compressor fuel," transported by pipeline to manufacturer. *Boral Gypsum, Inc. v. Leathers*, 325 Ark. 272, 924 S.W.2d 805 (1996).

Sales Price.

Where person contracted to install reinforcing steel bars at missile sites within the state and manufactured the bars in an out-of-state plant, the use tax provided under this section should have been on the

finished bars and not the raw materials, as the term "sales price" used in this section is used to provide a method of determining the basis on which the three percent would apply and does not mean there must be an ordinary sale before the tax is payable. *Republic Steel Corp. v. McCastlain*, 240 Ark. 979, 403 S.W.2d 90 (1966).

The Revenue Division properly calculated the sales and use tax due on the sale of precast concrete components based upon the sale price charged the general contractor. The precast concrete components were large, specially designed and constructed pieces of concrete, and were tangible personal property. They were not real property at the time they were transported to the jobsite. *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992), cert. denied, 506 U.S. 826, 113 S. Ct. 82, 121 L. Ed. 2d 46 (1992).

Subject to Tax.

Rentals and leases are unquestionably covered under this section, and rented tapes and films that finally come to rest for the purpose for which they are sent are subject to tax. *American Television Co. v. Hervey*, 253 Ark. 1010, 490 S.W.2d 796 (1973).

Painted bulletins, posters, facings, hardware, and paint, purchased out of state and used in connection with the taxpayer's billboard advertising service, were not exempt from the use tax. *Technical Servs. of Ark., Inc. v. Pledger*, 320 Ark. 333, 896 S.W.2d 433 (1995).

Cited: *Ragland v. General Tire & Rubber Co.*, 297 Ark. 394, 763 S.W.2d 70 (1989); *Pledger v. Easco Hand Tools, Inc.*, 304 Ark. 47, 800 S.W.2d 690 (1990); *Pledger v. Brunner & Lay, Inc.*, 308 Ark. 512, 825 S.W.2d 599 (1992); *Pledger v. Baldor Int'l, Inc.*, 309 Ark. 30, 827 S.W.2d 646 (1992).

26-53-107. Additional taxes levied.

(a)(1) In addition to the excise tax levied upon the privilege of storing, using, distributing, or consuming tangible personal property and taxable services within this state by this subchapter there is levied an excise tax of one percent (1%) upon all tangible personal property and taxable services subject to the tax levied in this subchapter except for food and food ingredients that are taxed under § 26-53-145.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of state compensating taxes.

(b)(1) In addition to the excise tax levied upon the privilege of storing, using, distributing, or consuming tangible personal property and taxable services within the state by this subchapter, there is levied an excise tax of one-half of one percent (0.5%) upon all tangible personal property and taxable services subject to the tax levied in this subchapter except for food and food ingredients that are taxed under § 26-53-145.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of Arkansas compensating taxes.

(c)(1) There is levied an additional excise tax of one-half of one percent (0.5%) upon all tangible personal property and taxable services subject to the tax levied by this subchapter except for food and food ingredients that are taxed under § 26-53-145.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by this subchapter for the collection, reporting, and payment of Arkansas compensating taxes.

(d)(1) There is levied an additional excise tax of seven-eighths of one percent (0.875%) upon all tangible personal property and taxable services subject to the tax levied by this subchapter except for food and food ingredients that are taxed under § 26-53-145.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by this subchapter for the collection, reporting, and payment of Arkansas compensating taxes.

History. Acts 1983 (1st Ex. Sess.), No. 63, § 2; A.S.A. 1947, § 84-3105.4; Acts 1989, No. 817, § 2; 1991, No. 3, § 3; 1999, No. 1492, § 4; Acts 2000 (2nd Ex. Sess.), Nos. 1 and 2, § 9; 2003, No. 1273, § 17; 2003 (2nd Ex. Sess.), No. 107, §§ 3, 4; 2007, No. 110, § 6.

A.C.R.C. Notes. The amendment of this section by Acts 1999, No. 1492, § 4, added subsection (c) to the section, but made the effectiveness of the addition of that subsection contingent upon the occurrence of the following: (a) That the General Assembly refers a constitutional amendment to be approved during the 2000 general election; (b) That the amendment provides for a limitation on the increase in the assessed value of real property after a county-wide reappraisal; and (c) That the constitutional amendment is approved.

Subsection (c) of this section became effective as a result of House Joint Resolution 1015 of 1999 the General Assembly

referred to a vote of the electors at the 2000 general election a constitutional amendment that provided for a limit on the increase in the assessed value of real property as a result of a county-wide reappraisal, and the constitutional amendment was approved. This constitutional amendment is now Arkansas Constitution Amendment 79.

As enacted by Acts 2000 (2nd Ex. Sess.), Nos. 1 and 2, § 9, subdivision (c)(1) began: "Beginning January 1, 2001,".

As enacted by Acts 2003 (2nd Ex. Sess.), No. 107, § 4, subdivision (d)(1) began: "Beginning March 1, 2004,".

Amendments. The 2003 amendment inserted "and taxable services" following "personal property" and "of 1949" following Arkansas Compensating Tax Act" in (a) and (b); inserted "and taxable services" following "personal property" in (c); and made a minor stylistic change.

The 2003 (2nd Ex. Sess.) amendment added (d).

The 2007 amendment added "except for food and food ingredients which are taxed under § 26-53-145" at the end of (a)(1), (b)(1), (c)(1) and (d)(1).

Effective Dates. Acts 1999, No. 1492, § 8: provided: "The provisions of Section 5 shall be effective 90 days after adjournment. The provisions of Sections 1, 2, 3, 4, 6 and 7 shall not be effective unless; a) the General Assembly refers a constitutional amendment to be approved during the 2000 general election; b) the amendment provides for a limitation on the increase in the assessed value of real property after a county-wide reappraisal; and c) the amendment is approved. If those conditions are met, Sections 1, 2, 3, 4 and 6 shall become effective on January 1, 2001, and Section 7 shall become effective on January 1, 2002. Claims for refund may be filed in 2001 pursuant to §§ 26-51-601 - 26-51-608 for property taxes paid during calendar year 2000 for property assessed in calendar year 1999."

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the

2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Bonds, 8 U. Ark. Little Rock L.J. 551.

CASE NOTES

Cited: S.H. & J. Drilling Corp. v. Qualls, 268 Ark. 71, 593 S.W.2d 178 (1980); Ragland v. K-Mart Corp., 274 Ark.

297, 624 S.W.2d 430 (1981); Pledger v. Brunner & Lay, Inc., 308 Ark. 512, 825 S.W.2d 599 (1992).

26-53-108. Imposition and rate of tax on certain personal property.

A state compensating tax in the amount of three percent (3%) of the gross purchase price is levied on the following described personal property:

(1) **PUBLIC CARRIERS.**

(A) Motor Carriers — Tangible personal property consisting of tractors, trailers, semitrailers, trucks, buses, and other rolling stock, including replacement tires, used directly in the transportation of persons or property in intrastate or interstate common carrier transportation;

(B) Railroads — All tangible personal property except fuel consumed in the operation of railroad rolling stock;

(C) Pipelines — Tangible personal property consisting of transmission lines and pumping or pressure control equipment used directly in or connected to the primary pipeline facility engaged in intrastate or interstate common carrier transportation of property;

(D) Airlines — Tangible personal property consisting of airplanes and navigation instruments used directly in or becoming a part of flight aircraft engaged in transportation of persons or property in regular scheduled intrastate or interstate common carrier transportation;

(2) **PUBLIC TELEPHONE AND TELEGRAPH COMPANIES.** Tangible personal property consisting of exchange equipment, lines, boards, and all accessory devices used directly in and connected to the primary facility engaged in transmission of messages;

(3) **PUBLIC UTILITIES.**

(A) Gas companies — Tangible personal property consisting of transmission and distribution pipelines and pumping or pressure control equipment used in connection therewith which is used directly in the primary pipeline facility for the purpose of transporting and delivering natural gas;

(B) Water companies — Tangible personal property consisting of transmission and distribution lines, pumping machinery and controls used in connection therewith, and cleaning or treating equipment of a primary water distribution system;

(C) Electric power companies — Tangible personal property of public electric power companies consisting of all machinery and equipment, including reactor cores; and related accessory devices used in the generation and production of electric power and energy; and transmission facilities consisting of the lines, including poles, towers, and other supporting structures, transmitting electric power and energy, together with substations located on and attached to such lines.

History. Acts 1971, No. 222, §§ 1, 2; § 2, provided that, on and after July 1, A.S.A. 1947, §§ 84-3105.1, 84-3105.2. 1972, through June 30, 1973, the rate of

Publisher's Notes. Acts 1971, No. 222, taxation provided for in § 26-53-108 was

to be increased to one and one-half percent; that, on and after July 1, 1973, through June 30, 1974, the rate of tax provided for in § 26-53-108 was to be

increased to two percent; and that, on and after July 1, 1974 and thereafter, the rate of tax provided for in § 26-53-108 was to be increased to three percent.

CASE NOTES

Cited: American Television Co. v. (1973); Heath v. Research-Cottrell, Inc.,
Hervey, 253 Ark. 1010, 490 S.W.2d 796 258 Ark. 813, 529 S.W.2d 336 (1975).

26-53-109. Tax on use, storage, or distribution of computer software.

(a) The excise tax levied by this subchapter and by any act supplemental to this subchapter is levied on the privilege of storing, using, distributing, or consuming within this state any of the following:

(1)(A) Computer software, including prewritten computer software, which shall be treated as a use, storage, distribution, or consumption of tangible personal property for purposes of tax.

(B) As used in this section:

(i) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;

(ii)(a) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(b) "Computer software" does not include software that is delivered electronically or by load and leave;

(iii) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media;

(iv) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(v) "Load and leave" means delivery to the purchaser by use of a tangible storage media in which the tangible storage media is not physically transferred to the purchaser; and

(vi) "Prewritten computer software" means computer software, including prewritten upgrades, which is designed and developed by the author or other creator to the specifications of a specific purchaser; and

(2) Service of repairing or maintaining computer equipment or hardware in any form.

(b) It is found and determined by the General Assembly that technological advances in the computer industry have created an uncertainty as to whether sales of computer software constitute a transfer of tangible personal property. This section is not intended to affect the taxability of any sales of computer software prior to February 9, 1984.

History. Acts 1983 (1st Ex. Sess.), No. 84-3105.3n; Acts 1989, No. 817, § 3; 2007, 88, §§ 2, 3; A.S.A. 1947, §§ 84-3105.3, No. 181, § 32.

Amendments. The 2007 amendment added (a)(1)(B) and (a)(2), redesignated part of the existing provisions of (a) as (a)(1)(A), rewrote present (a)(1)(A), and made related and stylistic changes.

Effective Dates. Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

RESEARCH REFERENCES

A.L.R. Computer software or printout transactions as subject to state sales or use tax. 36 A.L.R.5th 133.

Am. Jur. 71 Am. Jur. 2d State Tax. § 264.5.

26-53-110. Financial institutions.

Sales of tangible personal property and services to financial institutions shall be subject to the state compensating tax levied in this subchapter, the same as such sales to other business corporations.

History. Acts 1973, No. 182, § 6; A.S.A. 1947, § 84-1937.

Publisher's Notes. For definitions applicable to, and legislative intent concerning, this section see §§ 26-26-1502 and 26-50-101.

Effective Dates. Acts 1973, No. 182, § 9, provided that this act shall be in effect on and after January 1, 1973, and shall apply to tax years after said date.

26-53-111. Deduction for bad debts.

A bad debt deduction from a taxable sale under this subchapter is allowed and shall be taken in the same manner as provided in § 26-52-309.

History. Acts 1983 (1st Ex. Sess.), No. 94, § 1; A.S.A. 1947, § 84-1950; Acts 2003, No. 1273, §§ 18-21; 2007, No. 181, § 33.

Amendments. The 2003 amendment redesignated former (a) as present (a)(1) and (a)(2); in present (a)(1), inserted "of 1949" and substituted "on the return ... income tax purposes" for "for any report"; redesignated former (b)(1) as present (b)(1)(A) and added (b)(1)(B); in (e), substituted "return filed for the period in which the collection is made" for "next return due after the collection"; and added (f).

The 2007 amendment rewrote the section.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss

of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales

and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax

Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

26-53-112. Exemptions generally.

There are specifically exempted from the taxes levied in this subchapter:

(1) Property or services, the storage, use, distribution, or consumption of which this state is prohibited from taxing under the United States Constitution or laws or the Arkansas Constitution or laws; and

(2) Sales of tangible personal property or services on which the tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., is levied and any tangible personal property or services specifically exempted from taxation by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and legislation enacted subsequent to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

History. Acts 1949, No. 487, § 6; 1971, No. 222, § 3; A.S.A. 1947, § 84-3106; Acts 2003, No. 1273, § 22.

Amendments. The 2003 amendment inserted "or services" and "distribution" in (1); and twice inserted "or services" in (2).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and

Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the

Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance

and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

A.L.R. Parts and supplies used in repair as subject to sales and use taxes. 113 A.L.R.5th 313.

CASE NOTES

ANALYSIS

Constitutionality.
Construction.
Appeals.
Burden of Proof.
Gross Receipts Act.
Items Exempted.
Items Not Exempted.

Constitutionality.

This section is not unconstitutional on the ground that General Assembly in granting exemptions acted in an arbitrary manner. *Teague v. Scurlock*, 223 Ark. 271, 265 S.W.2d 528 (1954).

Construction.

Tax exemption provisions must be strictly construed. *C. J. C. Corp. v. Cheney*, 239 Ark. 541, 390 S.W.2d 437 (1965).

Any tax exemption provision must be strictly construed against the exemption, and to doubt is to deny the exemption. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980); *Qualls v. Georgia-Pacific Corp.*, 269 Ark. 426, 602 S.W.2d 646 (1980).

Appeals.

On appeal, the Supreme Court reviews tax exemption cases de novo and does not reverse a finding of fact unless it is clearly against the preponderance of the evidence. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980).

Burden of Proof.

Since taxation is the rule and exemption the exception, the burden is on taxpayers to clearly show they are entitled to exemption from the use tax. *Cheney v. Georgia-Pacific Paper Corp.*, 237 Ark. 161, 371 S.W.2d 843 (1963).

There is a presumption in favor of the taxing power of the state, and a claimant has the burden to clearly establish any right to an exemption. *C. J. C. Corp. v. Cheney*, 239 Ark. 541, 390 S.W.2d 437 (1965).

Taxpayer has the burden of clearly establishing an exemption beyond a reasonable doubt. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980).

Gross Receipts Act.

The exception from the use tax found in this section exempts only tangible personal property specifically exempted by the Arkansas Gross Receipts Act, § 26-52-101 et seq.; the items to be exempted are specifically described and identified in that chapter. *Technical Servs. of Ark., Inc. v. Pledger*, 320 Ark. 333, 896 S.W.2d 433 (1995).

The exemption for the "gross proceeds derived from sales" does not mean an exemption for tangible personal property simply because it is used in the conduct of the business. *Technical Servs. of Ark., Inc. v. Pledger*, 320 Ark. 333, 896 S.W.2d 433 (1995).

Items Exempted.

Disposable paper cups brought by carbonated beverage company for use in marketing soft drinks were exempt from use tax as a purchase for resale. *Hervey v. Southern Wooden Box, Inc.*, 253 Ark. 290, 486 S.W.2d 65 (1972).

Evidence of no intent to preserve title or claim to cardboard containers and that initial purchase was intended to be for later sale entitled taxpayer to exemption. *Arkansas Beverage Co. v. Heath*, 257 Ark. 991, 521 S.W.2d 835 (1975).

Where a bottled water seller sold only to distributors, not directly to consumers, and its contracts with the distributors provided that it would sell bottles to the distributors at cost, the transactions fell within the sales tax exemption of sales for resale, which is carried forward into the use tax law. *Ragland v. Mountain Valley Spring Co.*, 287 Ark. 4, 696 S.W.2d 710 (1985).

Items Not Exempted.

Where most wooden cases were returned to soft drink seller, the cases were for the seller's own consumption or use, not a sale for resale, and cases were not exempt from use tax. *Hervey v. Southern Wooden Box, Inc.*, 253 Ark. 290, 486 S.W.2d 65 (1972).

Evidence that purchase of bottles was not intended and that there was no sale or resale did not entitle beverage manufacturer to exemption from use tax. *Arkansas Beverage Co. v. Heath*, 257 Ark. 991, 521 S.W.2d 835 (1975).

Where chlorine is used in manufacture of bromine, the chlorine does not become a part of the bromine, but quite the opposite, the chlorine takes something from the bromine, becomes chloride, and is discarded as worthless; thus it is at best consumed in the manufacturing process, not resold to the purchaser as tangible property, and is subject to use tax. *Great Lakes Chem. Corp. v. Wooten*, 266 Ark. 511, 587 S.W.2d 220 (1979).

Preprinted advertising supplements are not a component part of the newspapers in which they appear and are not exempt from use tax as "newspapers" as that term is used in § 26-52-401 and incorporated in subdivision (2) of this section. *Ragland v. K-Mart Corp.*, 274 Ark. 297, 624 S.W.2d 430 (1981).

Cited: *American Television Co. v. Hervey*, 253 Ark. 1010, 490 S.W.2d 796 (1973); *Heath v. Midco Equip. Co.*, 256 Ark. 14, 505 S.W.2d 739 (1974); *Ragland v. General Tire & Rubber Co.*, 297 Ark. 394, 763 S.W.2d 70 (1989).

26-53-113. Exemption for unprocessed crude oil.

Unprocessed crude oil is specifically exempted from the taxes levied in this subchapter.

History. Acts 1949, No. 487, § 6; 1968 (1st Ex. Sess.), No. 5, § 2; 1971, No. 222, § 3; A.S.A. 1947, § 84-3106.

CASE NOTES**ANALYSIS**

Constitutionality.
Construction.
Appeals.
Burden of Proof.

Constitutionality.

This section is not unconstitutional on the ground that General Assembly in granting exemptions acted in an arbitrary manner. *Teague v. Scurlock*, 223 Ark. 271, 265 S.W.2d 528 (1954).

Construction.

Tax exemption provisions must be strictly construed. *C. J. C. Corp. v. Cheney*, 239 Ark. 541, 390 S.W.2d 437 (1965).

Any tax exemption provision must be strictly construed against the exemption, and to doubt is to deny the exemption. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980); *Qualls v. Georgia-Pacific Corp.*, 269 Ark. 426, 602 S.W.2d 646 (1980).

Appeals.

On appeal, the Supreme Court reviews tax exemption cases de novo and does not reverse a finding of fact unless it is clearly against the preponderance of the evidence. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980).

Burden of Proof.

Since taxation is the rule and exemption the exception, the burden is on taxpayers to clearly show they are entitled to exemption from the use tax. *Cheney v. Georgia-Pacific Paper Corp.*, 237 Ark. 161, 371 S.W.2d 843 (1963).

There is a presumption in favor of the taxing power of the state, and a claimant has the burden to clearly establish any right to an exemption. *C. J. C. Corp. v. Cheney*, 239 Ark. 541, 390 S.W.2d 437 (1965).

Taxpayer has the burden of clearly establishing an exemption beyond a reasonable doubt. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980).

Cited: *American Television Co. v. Hervey*, 253 Ark. 1010, 490 S.W.2d 796 (1973); *Heath v. Midco Equip. Co.*, 256 Ark. 14, 505 S.W.2d 739 (1974).

26-53-114. Exemption for certain machinery and equipment.

(a) There is specifically exempted from the taxes levied in this subchapter:

(1)(A) Only to the extent that the machinery and equipment is purchased and used for the purposes set forth in this subdivision (a)(1), machinery and equipment used directly in the producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in the State of Arkansas, including facilities and plants for manufacturing feed, processing of poultry and eggs and livestock and the hatching of poultry.

(B) The machinery and equipment will be exempt under this section if it is purchased and used to create new manufacturing or processing plants or facilities within this state or to expand existing manufacturing or processing plants or facilities within this state;

(2)(A) Machinery purchased to replace existing machinery in its entirety and used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in this state will be exempt under this section.

(B)(i) As used in subdivision (a)(2)(A) of this section, "machinery purchased to replace existing machinery" means that substantially all of the machinery and equipment required to perform an essential function is physically replaced with new machinery.

(ii) As used in subdivision (a)(2)(B)(i) of this section, "substantially" is intended to exclude routine repairs and maintenance and partial replacements that do not improve efficiency or extend the useful life of the entire machine, but it is not intended to mean that foundations and minor components which can be economically adapted, rebuilt, or refurbished must be completely replaced when replacement would be more expensive or impracticable than adapting, rebuilding, or refurbishing the old foundation and minor components; and

(3) Machinery and equipment required by state or federal law or regulations to be installed and utilized by manufacturing or processing

plants or facilities or cities or towns in this state to prevent or reduce air or water pollution or contamination which might otherwise result from the operation of the plants or facility or city or town.

(b) As used in this section, "manufacturing" or "processing" refer to and include those operations commonly understood within their ordinary meaning and shall also include:

- (1) Mining;
- (2) Quarrying;
- (3) Refining;
- (4) Extracting oil and gas;
- (5) Cotton ginning;
- (6) Drying of rice, soybeans, and other grains;
- (7) Manufacturing of feed;
- (8) Processing of poultry and eggs and the hatching of poultry;
- (9) Printing of all kinds, types, and characters, including the services of overprinting and photographic processing incidental to printing;
- (10) Processing of scrap metal into grades and bales for further processing into steel and other metals;
- (11) Rebuilding or remanufacturing of used parts and retreading of tires for automobiles, trucks, and other mobile equipment powered by electrical or internal combustion engines or motors if the rebuilt or remanufactured parts or retreaded tires are not sold directly to the consumer but are sold for resale; and
- (12) Producing of protective coatings which increase the quality and durability of a finished product.

(c)(1) It is the intent of this section to exempt only such machinery and equipment as shall be used directly in the actual manufacturing or processing operation at any time from the initial stage when actual manufacturing or processing begins through the completion of the finished article of commerce and the packaging of the finished end product.

(2) As used in this section, "directly" is used to limit the exemption to only the machinery and equipment used in actual production during processing, fabricating, or assembling raw materials or semifinished materials into the form in which such personal property is to be sold in the commercial market.

(3) For purposes of this subsection, the following definitions, specific inclusions, and specific exclusions shall apply and represent the intent of the General Assembly as to its interpretation of the term "used directly":

(A)(i) Machinery and equipment used in actual production include machinery and equipment that meet all other applicable requirements and which cause a recognizable and measurable mechanical, chemical, electrical, or electronic action to take place as a necessary and integral part of manufacturing, the absence of which would cause the manufacturing operation to cease.

(ii) "Directly" does not mean that the machinery and equipment must come into direct physical contact with any of the materials that become necessary and integral parts of the finished product.

(iii) Machinery and equipment which handle raw, semifinished, or finished materials or property before the manufacturing process begins are not used directly in the manufacturing process.

(iv) Machinery and equipment which are necessary for purposes of storing the finished product are not used directly in the manufacturing process.

(v) Machinery and equipment used to transport or handle product while manufacturing is taking place are used directly;

(B) Further, machinery and equipment "used directly" in the manufacturing process shall include, but shall not be limited to, the following:

(i) Molds and dies that determine the physical characteristics of the finished product or its packaging materials;

(ii) Testing equipment to measure the quality of the finished product;

(iii) Computers and related peripheral equipment that directly control or measure the manufacturing process; and

(iv) Machinery and equipment that produce steam, electricity, or chemical catalysts and solutions that are essential to the manufacturing process but which are consumed during the course of the manufacturing process and do not become necessary and integral parts of the finished product;

(C) Machinery and equipment "used directly" in the manufacturing process shall not include the following:

(i) Hand tools;

(ii) Machinery, equipment, and tools used in maintaining and repairing any type of machinery and equipment;

(iii) Transportation equipment, including conveyors, used solely before or after the manufacturing process has been started or completed;

(iv) Office machines and equipment including computers and related peripheral equipment not directly used in controlling or measuring the manufacturing process;

(v) Buildings;

(vi) Machinery and equipment used in administrative, accounting, sales, or other such activities of the business;

(vii) All furniture;

(viii) All other machinery and equipment not used directly in manufacturing or processing operations as defined in this section; and

(ix) Machinery and equipment used by a manufacturer to produce or repair replacement dies, molds, repair parts or replacement parts, used or consumed in the manufacturer's own manufacturing process.

(d) The Director of the Department of Finance and Administration may promulgate rules and regulations for the orderly and efficient administration of this section.

History. Acts 1949, No. 487, § 6; 1955, No. 55, § 1; 1957, No. 141, § 1; 1959, No. 35, § 1; 1959, No. 462, § 1; 1961, No. 140, § 1; 1967, No. 113, § 2; 1968 (1st Ex. Sess.), No. 5, § 2; 1971, No. 222, § 3; 1975, No. 760, § 2; 1983, No. 791, § 2; 1983, No. 870, § 2; 1985, No. 492, § 2; 1985, No. 841, § 2; A.S.A. 1947, § 84-3106; Acts 1987, No. 911, § 1; 1993, No. 1250, § 2; 1997, No. 1233, § 2; 1999, No. 854, § 3.

Publisher's Notes. Acts 1967, No. 113, § 3, provided that all laws and parts of laws in conflict with this act are repealed, provided, however, that the exemptions now granted by subsections (A), (B), (C), (E), (F), and (G) of Acts 1949, No. 487, as amended by Section 1 of Acts 1955, No. 55, § 1, as amended by Acts 1957, No. 141, § 1, as amended by Acts 1959, No. 35, § 1, as amended by Acts 1961, No. 140, § 1, shall not be construed so as to be narrowed in scope by this amendment of subsection (d) of that act as provided in section 2 of this act, and provided further, the amendment of subsection (r) of Acts 1941, No. 386, § 4, shall not be construed so as to narrow the scope of the specific exemptions set out under that act.

Acts 1968 (1st Ex. Sess.), No. 5, provided, in part that the exemptions now

granted by subsections (A), (B), (C), (E), (F), and (G) of Acts 1949, No. 487, § 6, as amended by Acts 1955, No. 55, § 1, as amended by Acts 1957, No. 141, § 1, as amended by Acts 1959, No. 35, § 1, as amended by Acts 1961, No. 140, § 1, shall not be construed so as to be narrowed in scope by this amendment of subsection (D) of that act as provided in section 2 of this act.

Effective Dates. Acts 1983, No. 791, § 3, provided that the provisions of this act shall apply for all gross receipts tax returns and compensating tax returns for the periods beginning on or after the effective date of this act.

Acts 1983, No. 870, §§ 3, 4, provided that it is the intent of this act to provide the enumerated exemptions as incentives to encourage the location of new manufacturing plants in Arkansas, the expansion of existing manufacturing plants in Arkansas, and the modernization of existing manufacturing plants in Arkansas through the replacement of old, inefficient, or technologically obsolete machinery and equipment, and that the provisions of this act shall apply for all gross receipts tax returns and compensating tax returns for the periods beginning on or after January 1, 1985.

RESEARCH REFERENCES

A.L.R. Parts and supplies used in repair as subject to sales and use taxes. 113 A.L.R.5th 313.

Am. Jur. 71 Am. Jur. 2d State Tax. § 335.5.

U. Ark. Little Rock L.J. Fifteenth Annual Survey of Arkansas Law, 15 U. Ark. Little Rock L.J. 427.

CASE NOTES

ANALYSIS

Constitutionality.
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Constitutionality.

This section is not unconstitutional on the ground that General Assembly in granting exemptions acted in an arbitrary manner. *Teague v. Scurlock*, 223 Ark. 271, 265 S.W.2d 528 (1954).

In General.

Exemptions afforded taxpayer by this section were not repealed by § 26-53-201 et seq., relating to contractors. *Larey v.*

Wolfe, 242 Ark. 715, 416 S.W.2d 266 (1967); *Heath v. Research-Cottrell, Inc.*, 258 Ark. 813, 529 S.W.2d 336 (1975).

Construction.

Tax exemption provisions must be strictly construed. *C. J. C. Corp. v. Cheney*, 239 Ark. 541, 390 S.W.2d 437 (1965).

Any tax exemption provision must be strictly construed against the exemption, and to doubt is to deny the exemption. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980); *Qualls v. Georgia-Pacific Corp.*, 269 Ark. 426, 602 S.W.2d 646 (1980); *Pledger v. Baldor Int'l, Inc.*, 309 Ark. 30, 827 S.W.2d 646 (1992).

Purpose.

The purpose of the 1968 amendment is perfectly clear — the original act, by exempting all tangible personal property used by manufacturers, could arguably have exempted office furniture, typewriters, automobiles, and various other personal property not used directly in the manufacturing process; the amendment limited the exemption to machinery and equipment used directly in manufacturing, but it still has to be used “at manufacturing or processing facilities.” *Gaddy v. Hummelstein Iron & Metal, Inc.*, 266 Ark. 1, 585 S.W.2d 1 (1979).

By enacting this section the legislature did not change the prior law but merely intended to clarify it. *Pledger v. Baldor Int'l, Inc.*, 309 Ark. 30, 827 S.W.2d 646 (1992).

Appeals.

On appeal, the Supreme Court reviews tax exemption cases de novo and does not reverse a finding of fact unless it is clearly against the preponderance of the evidence. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980).

Articles of Commerce.

Tax exemption is properly denied where finished products are not “articles of commerce” as required under the exemption provisions of subdivision (a)(1)(A) of this section. *C & C Mach., Inc. v. Ragland*, 278 Ark. 629, 648 S.W.2d 61 (1983).

Burden of Proof.

Since taxation is the rule and exemption the exception, the burden is on taxpayers to clearly show they are entitled to exemption from the use tax. *Cheney v.*

Georgia-Pacific Paper Corp., 237 Ark. 161, 371 S.W.2d 843 (1963).

There is a presumption in favor of the taxing power of the state, and a claimant has the burden to clearly establish any right to an exemption. *C. J. C. Corp. v. Cheney*, 239 Ark. 541, 390 S.W.2d 437 (1965).

Taxpayer has the burden of clearly establishing an exemption beyond a reasonable doubt. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980).

Creation or Expansion.

Company engaged in construction and repair work on state highways under contracts with state was not exempt from tax on ground that material used in highway was material used in “creation of facilities.” *Morley v. E.E. Barber Constr. Co.*, 220 Ark. 485, 248 S.W.2d 689 (1952).

Spare parts were held not to be machinery purchased “to expand existing manufacturing facilities” within meaning of subdivision (a)(1)(B) of this section. *Qualls v. Georgia-Pacific Corp.*, 269 Ark. 426, 602 S.W.2d 646 (1980).

Manufacturing or Processing.

Dam used in part to manufacture electricity is a manufacturing facility. *Morley v. Brown & Root, Inc.*, 219 Ark. 82, 239 S.W.2d 1012 (1951).

Personal tangible property purchased by contractors engaged in construction of dam used in part for manufacturing of electricity was exempt from use tax to the extent that property went into construction of dam. *Morley v. Brown & Root, Inc.*, 219 Ark. 82, 239 S.W.2d 1012 (1951).

Company engaged in construction and repair of roads held not a manufacturer. *Morley v. E.E. Barber Constr. Co.*, 220 Ark. 485, 248 S.W.2d 689 (1952).

General Assembly did not have any intent to exempt poultry feed from tax by virtue of enactment of this section. *Teague v. Scurlock*, 223 Ark. 271, 265 S.W.2d 528 (1954) (decided prior to enactment of §§ 26-52-404 and 26-53-120).

One engaged in ginning cotton held not engaged in the business of manufacturing or processing. *Scurlock v. Henderson*, 223 Ark. 727, 268 S.W.2d 619 (1954), questioned, *C. J. C. Corp. v. Cheney*, 239 Ark. 541, 390 S.W.2d 437 (1965) (decision prior to 1955 amendment).

"Manufacturing" and "processing" are not considered as two distinct operations, "processing" having reference to some stage of manufacture. *Pellerin Laundry Mach. Sales Co. v. Cheney*, 237 Ark. 59, 371 S.W.2d 524 (1963).

Laundry and dry cleaning machinery and equipment are not manufacturing or processing equipment and machinery. *Pellerin Laundry Mach. Sales Co. v. Cheney*, 237 Ark. 59, 371 S.W.2d 524 (1963).

Out-of-state purchases of incubators for use in commercial hatchery held not for use in processing within meaning of this section. *Peterson Produce Co. v. Cheney*, 237 Ark. 600, 374 S.W.2d 809 (1964).

In determining what will constitute a manufacturer or processor within the exemption provided by this section Supreme Court will follow the common usage or popular meaning of words. *C. J. C. Corp. v. Cheney*, 239 Ark. 541, 390 S.W.2d 437 (1965).

Foreign corporation supplying ready-mix concrete to contractor was not exempt as a "manufacturer or processor." *C. J. C. Corp. v. Cheney*, 239 Ark. 541, 390 S.W.2d 437 (1965).

Fabrication of drainage culverts from abandoned railroad tank cars constituted a manufacturing process within meaning of subdivision (a)(1)(A) of this section. *Arkansas Ry. Equip. Co. v. Heath*, 257 Ark. 651, 519 S.W.2d 45 (1975).

Evidence held sufficient to show company was in business of producing and selling bottled carbonated soft drinks, entitling it to exemption as manufacturer. *Arkansas Beverage Co. v. Heath*, 257 Ark. 991, 521 S.W.2d 835 (1975).

One processing and packaging slaughtered poultry for sale and cooked poultry for transportation and marketing held not a manufacturer. *Heath v. Westark Poultry Processing Corp.*, 259 Ark. 141, 531 S.W.2d 953 (1976).

Manufacturing and processing are not two distinct operations and a taxpayer, in order to be entitled to the exemption, must first qualify as a manufacturer. *Gaddy v. Hummelstein Iron & Metal, Inc.*, 266 Ark. 1, 585 S.W.2d 1 (1979).

A dealer in scrap metal is not a manufacturer of scrap metal, because that is what it begins with and what it ends with; it changes the form of scrap metal, but it does not make a new product. *Gaddy v.*

Hummelstein Iron & Metal, Inc., 266 Ark. 1, 585 S.W.2d 1 (1979).

Coal company's crushing process held not to constitute "manufacturing" because process did not change essential identity of the coal. *Ragland v. Arkansas Valley Coal Servs., Inc.*, 275 Ark. 108, 627 S.W.2d 559 (1982).

Automated equipment, or "minilabs," purchased and used by businesses which process film, do not fall within the manufacturing exemption from use tax because the equipment is not used to produce "articles of commerce." *Pledger v. Noritsu America Corp.*, 320 Ark. 371, 896 S.W.2d 595 (1995).

Packaging materials purchased out-of-state by a taxpayer in connection with its business of hazardous waste disposal did not qualify as machinery and equipment used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing or processing plants or facilities in the state as the taxpayer paid cement kilns and power plants to take packaged waste and burn it and those entities never paid the taxpayer for packaged fuel during the audit period. *Rineco Chem. Indus., Inc. v. Weiss*, 344 Ark. 118, 40 S.W.3d 257 (2001).

Pollution Control.

Provisions in subdivision (a)(3) of this section exempting antipollution equipment from the tax applies to any industry including utilities. *Heath v. Research-Cottrell, Inc.*, 258 Ark. 813, 529 S.W.2d 336 (1975).

Exemption granted by subdivision (a)(3) of this section applies to contractors as well as to manufacturers or processors. *Heath v. Research-Cottrell, Inc.*, 258 Ark. 813, 529 S.W.2d 336 (1975).

Subdivision (a)(3) of this section applies to the design, furnishing, and installation of natural draft cooling tower to prevent water pollution. *Heath v. Research-Cottrell, Inc.*, 258 Ark. 813, 529 S.W.2d 336 (1975).

Recorder to monitor pollutants was not exempt from use tax as machinery or equipment used directly in manufacturing process. *Southern Steel & Wire Co. v. Wooten*, 276 Ark. 37, 631 S.W.2d 835 (1982).

Replacement of Existing Machinery.

Substitution of new metal post on moving arm of glass-cutting machine was not

replacement of machinery in its entirety. *Fourco Glass Co. v. Heath*, 261 Ark. 192, 547 S.W.2d 121 (1977).

Construction of new glass furnace built on foundation of old furnace was not replacement in its entirety. *Fourco Glass Co. v. Heath*, 261 Ark. 192, 547 S.W.2d 121 (1977).

Substitution of new parts for components held not to constitute replacement of "machinery in its entirety" as would come within subdivision (a)(2) of this section. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980).

Where company used original parts from an old boiler in reconstructing a new one, machinery was not "replaced in its entirety" under subdivision (a)(2) of this section. *Qualls v. Georgia-Pacific Corp.*, 269 Ark. 426, 602 S.W.2d 646 (1980).

Where items were physically combined with other existing components in order to construct a machine that had a single purpose and function, replacing those items did not constitute replacement of machinery in its entirety. *Southern Steel & Wire Co. v. Wooten*, 276 Ark. 37, 631 S.W.2d 835 (1982).

Testing Equipment.

The exemption for testing equipment includes equipment used to test components of a finished product. *Pledger v. Baldor Int'l, Inc.*, 309 Ark. 30, 827 S.W.2d 646 (1992).

Used Directly.

Use of commercial poultry feed to fatten fowls for market held not exempt from tax under this section, as feed not deemed an integral part of the finished product. *Teague v. Scurlock*, 223 Ark. 271, 265 S.W.2d 528 (1954) (decided prior to enactment of §§ 26-52-404 and 26-53-120).

Turbine generators are primary facilities used directly in processing and manufacturing. *Cheney v. Georgia-Pacific Paper Corp.*, 237 Ark. 161, 371 S.W.2d 843 (1963).

Miscellaneous items held not to be exempt as manufacturing machinery or supplies used directly in making wood pulp or paper. *Cheney v. Georgia-Pacific Paper Corp.*, 237 Ark. 161, 371 S.W.2d 843 (1963).

Oil and gas drilling rigs held to be used directly in mining, processing, and production of natural resources. *Larey v.*

Wolfe, 242 Ark. 715, 416 S.W.2d 266 (1967).

Egg and poultry processing equipment replacements, hatchery equipment, feeder lids, trays, pads, and cages for baby chicks, held not an integral part of the end product and not exempt from use tax. *Hervey v. Tyson's Foods, Inc.*, 252 Ark. 703, 480 S.W.2d 592 (1972).

Traces of chemical substances, use of which was merely incidental, were not exempt from use tax. *Hervey v. International Paper Co.*, 252 Ark. 913, 483 S.W.2d 199 (1972).

Use of locomotive cranes and magnet held to be "directly" used in manufacturing process within meaning of subdivision (a)(1) of this section and were not removed from exemption as "transportation equipment" within meaning of subsection (c) of this section. *Arkansas Ry. Equip. Co. v. Heath*, 257 Ark. 651, 519 S.W.2d 45 (1975).

Sufficient evidence was found that bottling machines were being used directly in the producing, assembling, processing, and packaging of finished product. *Arkansas Beverage Co. v. Heath*, 257 Ark. 991, 521 S.W.2d 835 (1975).

Ultraviolet detection system used to monitor equipment held not exempt from use tax under subsection, not used directly in manufacturing process. *Southern Steel & Wire Co. v. Wooten*, 276 Ark. 37, 631 S.W.2d 835 (1982).

The purchase of a large crane was a tax exempt transaction, because the crane was directly used in the manufacture of lumber and of wood chips, the latter being eventually sold to paper mills. *Ragland v. Deltic Farm & Timber Co.*, 288 Ark. 604, 708 S.W.2d 90 (1986).

The purchase of a computer aided design/computer-aided manufacturing system by a hand tool manufacturer was a tax exempt transaction, because the system performed an essential function directly in the manufacture of tools in that the system's function, designing and manufacturing, directly pertained to dies, and the dies shaped the wrenches and hand tools which were "articles of commerce." *Pledger v. Easco Hand Tools, Inc.*, 304 Ark. 47, 800 S.W.2d 690 (1990).

Die block materials which constituted the molds and dies which in turn determined the physical characteristics of the finished product were exempt. Simply be-

cause the material is purchased in raw form and shaped by the taxpayer instead of being purchased in finished form should not, alone, cause it to be taxable. *Pledger v. Easco Hand Tools, Inc.*, 304 Ark. 47, 800 S.W.2d 690 (1990).

The term "used directly in manufacturing" does not require the equipment to

directly come into contact with the finished product before qualifying for use tax exemption. *Pledger v. Baldor Int'l, Inc.*, 309 Ark. 30, 827 S.W.2d 646 (1992).

Cited: *American Television Co. v. Hervey*, 253 Ark. 1010, 490 S.W.2d 796 (1973); *Heath v. Midco Equip. Co.*, 256 Ark. 14, 505 S.W.2d 739 (1974).

26-53-115. Exemption for certain aircraft and railroad cars, parts, and equipment.

(a) The tax levied in this subchapter shall not apply to aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to tangible personal property owned or leased by aircraft, airmotive, or railroad companies brought into the State of Arkansas solely and exclusively for:

(1) Refurbishing, conversion, or modification within this state and which is not used or intended for use in this state, and the presence of such tangible personal property within this state shall not be construed as storage, use, or consumption in this state for the purpose of this subchapter if the aircraft, aircraft equipment, and railroad parts, cars, and equipment, or tangible personal property is removed from this state within sixty (60) days from the date of the completion of the refurbishing, conversion, or modification; or

(2) Storage for use outside or inside the State of Arkansas regardless of the length of time any such property is so stored in the State of Arkansas.

(b) If any such property is subsequently initially used in the State of Arkansas, the tax levied by this subchapter shall be and become applicable to the property so used in Arkansas.

(c)(1) The General Assembly determines that it was not the intent of this subchapter to impose the compensating tax upon aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to any tangible personal property owned or leased by aircraft, airmotive, or railroad companies as provided in § 26-53-106 and as classified by this section.

(2) Any claim that the State of Arkansas now has for collection of compensating taxes upon any such aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to tangible personal property owned or leased by aircraft, airmotive, or railroad companies brought into the State of Arkansas solely and exclusively for refurbishing, conversion, or modification shall not be collected, whether the claim is pending in the Revenue Division of the Department of Finance and Administration or is pending and unpaid as a result of any court litigation or court decision of this state.

(3) It is the intent of the General Assembly that the State of Arkansas should not pursue collection of any claim now pending or the execution of any court order with respect to any such claim for the collection of compensating taxes upon such property.

(d) However, no person shall have a claim against the State of Arkansas for any compensating tax paid to the State of Arkansas on or

before February 16, 1976, with respect to such tangible personal property.

History. Acts 1949, No. 487, § 5; 1957, No. 19, § 2; 1959, No. 260, § 2; 1975 (Extended Sess., 1976), No. 1237, §§ 1, 2; A.S.A. 1947, §§ 84-3105, 84-3105n; reen. Acts 1987, No. 772, § 1; 1995, No. 848, § 3.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 772, § 1. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Publisher's Notes. By Acts 1993, No. 1237, § 1, the General Assembly amended § 26-53-106 to add (e); however, the language is already codified in § 26-53-115, and the 1993 amendment made only minor stylistic changes; § 1 provided: "(e) Provided, however, that the tax levied in this act shall not apply to aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to tangible personal property owned or leased by aircraft, airmotive or railroad companies brought into the state of Arkansas solely and exclusively

for (i) refurbishing, conversion or modification within this state and is not used or intended for use in this state, and the presence of such tangible personal property within this state shall not be construed as storage, use, or consumption in this state for the purpose of this act, if such aircraft, aircraft equipment, and railroad parts, cars, and equipment, or tangible personal property is removed from this state within sixty (60) days from the date of the completion of such refurbishing, conversion, or modification, or (ii) storage for use outside or inside the state of Arkansas regardless of the length of time any such property is so stored in the state of Arkansas. If any such property is subsequently initially used in the state of Arkansas, the tax levied by this act shall be and become applicable to the property so used in Arkansas. Provided, further, that nothing in this subsection is intended to exempt from taxation any materials used or services furnished in the refurbishing, conversion, or modification of such property in this state which is subject to the Arkansas Gross Receipts Tax."

CASE NOTES

ANALYSIS

Constitutionality.

Initial Use.

Refurbishing, Conversion, or Modification.

Constitutionality.

Acts 1975 (Extended Sess. 1976), No. 1237, §§ 2, 5, were a clear attempt by the 1975 General Assembly to interpret a law enacted by the 1949 General Assembly after the Supreme Court has interpreted and applied that law; this action violates the separation of powers principle. *Federal Express Corp. v. Skelton*, 265 Ark. 187, 578 S.W.2d 1 (1979).

Initial Use.

The Compensating Tax Act is not intended to reach as far as to apply simply

to the first use of new railroad boxcars designed for usage throughout an interstate system. *Burlington N.R.R. v. Ragland*, 280 Ark. 182, 655 S.W.2d 437 (1983), questioned, *Martin v. Riverside Furniture Corp.*, 292 Ark. 399, 730 S.W.2d 483 (1987).

Refurbishing, Conversion, or Modification.

Where aircraft belonging to interstate air freight carrier were retained in the state for approximately 50 days to receive extensive modifications, the aircraft were subject to the compensating tax, even though ultimate use of the aircraft was in the carrier's interstate system. *Skelton v. Federal Express Corp.*, 259 Ark. 127, 531 S.W.2d 941 (1976) (decision prior to 1976 amendment).

26-53-116. Exemption for sale and purchase of certain vessels.

The gross receipts and gross proceeds derived from the sale and purchase of vessels, barges, and towboats of at least a fifty-ton load displacement and parts and labor used in the repair and construction of them are exempt from the state compensating tax levied by this subchapter.

History. Acts 1979, No. 449, § 1; A.S.A. 1947, § 84-1904.8.

RESEARCH REFERENCES

A.L.R. Parts and supplies used in repair as subject to sales and use taxes. 113 A.L.R.5th 313.

26-53-117. Exemption for motor fuels used in municipal buses — Penalties for abuse of exemption.

(a) The gross receipts or gross proceeds derived from the sale of motor fuel to the owner or operator of a motor bus operated on designated streets according to regular schedule under municipal franchise which is used for municipal transportation purposes shall be exempt from the tax levied in this subchapter.

(b) However, it shall be unlawful for the owner or operator of a motor bus operating under municipal franchise as provided in this section to use any or permit the use of any motor fuel upon which the compensating tax has not been paid in any motor vehicle other than a motor bus operated on designated streets according to regular schedules under municipal franchise.

(c)(1) Any owner or operator of a motor bus permitting motor fuel to be used in violation of this section shall be guilty of a violation and upon conviction shall be fined in an amount of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000).

(2) In addition to the fine in subdivision (c)(1) of this section, the owner or operator shall be liable to the State of Arkansas for a penalty of triple the amount of compensating tax due the State of Arkansas on any motor fuel upon which the compensating taxes have not been paid and which was used in violation of the provisions of this section.

History. Acts 1971, No. 600, § 3; A.S.A. 1947, § 75-1148.9; Acts 2005, No. 1994, § 174.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (c)(1).

26-53-118. Exemption for modular homes.

The storage, use, or consumption of a modular home constructed from materials on which the Arkansas gross receipts tax or state compensating tax has once been paid shall be exempt from the state compensating tax.

History. Acts 1985, No. 1068; § 4; A.S.A. 1947, § 84-3106.1; Acts 2003, No. 365, § 2.

Amendments. The 2003 amendment substituted “modular” for “custom manufactured” in the catchline and in the section.

Cross References. Gross receipts tax, § 26-52-101 et seq.

Effective Dates. Acts 2003, No. 365,

§ 3; Aug. 1, 2003. Effective date clause provided: “This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days.”

26-53-119. Exemption for sale of products for treating livestock and poultry and other commercial agricultural production.

The gross receipts or gross proceeds derived from sales of the following are exempt from the state compensating tax as levied by this subchapter:

- (1) Agricultural fertilizer;
- (2) Agricultural limestone; and
- (3) Agricultural chemicals, including, but not limited to:
 - (A) Agricultural pesticides and herbicides used in commercial production of agricultural products;
 - (B) Vaccines, medications, and medicinal preparations used in treating livestock and poultry being grown for commercial purposes; and
 - (C) Chemicals, nutrients, and other ingredients used in the commercial production of yeast.

History. Acts 1973, No. 68, § 1; 1985, Acts 1993, No. 98, § 2; 1993, No. 151, § 2; No. 1013, § 1; A.S.A. 1947, § 84-1905.2; 1995, No. 1296, § 87.

26-53-120. Feedstuffs used for livestock.

(a) All feedstuffs used in the commercial production of livestock or poultry in this state are exempt from the state compensating tax as levied by this subchapter.

(b) As used in this section, “feedstuffs” means:

- (1) Processed or unprocessed grains;
- (2) Mixed or unmixed grains;
- (3) Whole or ground hay;
- (4) Whole or ground straw;
- (5) Hulls, whether or not mixed with other materials; and
- (6) All food supplements, whether or not nutritional or medicinal, including hormones, antibiotics, vitamins, minerals, and medications ingested by poultry or livestock.

History. Acts 1955, No. 94, § 1; 1985, § 1, as amended, is also codified as 26-52-404. No. 1013, § 3; A.S.A. 1947, § 84-1924.

Publisher’s Notes. Acts 1955, No. 94,

CASE NOTES

Evidence.

Poultry distributor who fails to carry burden of showing that "water feed addi-

tives" are "feedstuffs" is not entitled to tax exemption. *Hervey v. Tyson's Foods, Inc.*, 252 Ark. 703, 480 S.W.2d 592 (1972).

26-53-121. Registration of vendors — Out-of-state vendors.

Every vendor selling tangible personal property or taxable services for storage, use, distribution, or consumption in this state shall:

- (1) Register with the Director of the Department of Finance and Administration;
- (2) Provide the location of any and all distribution or sales houses or offices of other places of business in this state; and
- (3) Provide such other information as the director may require.

History. Acts 1949, No. 487, § 7; A.S.A. 1947, § 84-3107; Acts 1987 No. 27, § 1; 1993, No. 617, § 3; 2003, No. 1273, § 23; 2007, No. 181, § 34.

Amendments. The 2003 amendment inserted "or taxable services" and "distribution."

The 2007 amendment deleted former (2) and redesignated the remaining subdivisions accordingly.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agree-

ment went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

CASE NOTES

Catalogue Sales.

Where no agency relationship existed between out-of-state mail order school book company and Arkansas teachers, the

company's sales of books in Arkansas were not subject to a vendor's use tax. *Pledger v. Troll Book Clubs, Inc.*, 316 Ark. 195, 871 S.W.2d 389 (1994).

26-53-122. Agents furnished statements of compliance.

Every vendor selling tangible personal property or taxable services for storage, use, distribution, or consumption in this state shall furnish all agents with a statement to the effect that the agent's principal has been and is complying with the provisions of this subchapter.

History. Acts 1949, No. 487, § 7; A.S.A. 1947, § 84-3107; Acts 2003, No. 1273, § 24.

Amendments. The 2003 amendment inserted "or taxable services" and "distribution" and made a gender neutral change.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agree-

ment went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-53-123. Liability for tax.

(a) Every person storing, using, distributing, or consuming in this state tangible personal property or taxable services purchased from a vendor shall be liable for the tax imposed by this subchapter, and the

liability shall not be extinguished until the tax has been paid to this state.

(b) However, a receipt from a vendor authorized by the Director of the Department of Finance and Administration under such rules and regulations as he or she may prescribe to collect the tax imposed given to the purchaser in accordance with the provisions of §§ 26-53-121 and 26-53-122 shall be sufficient to relieve the purchaser from further liability for the tax to which the receipt may refer.

History. Acts 1949, No. 487, § 5; 1957, No. 19, § 2; 1959, No. 260, § 2; A.S.A. 1947, § 84-3105; Acts 2003, No. 1273, § 25.

Amendments. The 2003 amendment added the present subsection designations; inserted “distributing” and “or taxable services” in present (a); and inserted “or she” in present (b).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the

Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state’s proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

26-53-124. Collection of tax by vendor.

(a)(1)(A) Every vendor making a sale of tangible personal property or taxable services directly or indirectly for the purpose of storage, use, distribution, or consumption in this state shall collect the tax from the purchaser and give a receipt for the tangible personal property or taxable services.

(B) Subdivision (a)(1)(A) of this section includes all out-of-state vendors who deliver merchandise and taxable services into Arkansas in their own conveyance when such merchandise or services will be stored, used, distributed, or consumed within this state.

(C) The sale of tangible personal property or taxable services will be sourced according to §§ 26-52-521—26-52-523.

(2) The required amount of the tax collected by the vendor from the purchaser shall be displayed separately upon the check, sales slip, bill, receipt, or other evidence of sale.

(3) The processing of orders electronically, by fax, telephone, the Internet, or other electronic ordering process, or the processing of orders by non-electronic means, by mail order, fax, telephone, or otherwise, does not relieve a vendor of responsibility for collection of the tax from the purchaser if both the following conditions exist:

(A) The vendor holds a substantial ownership interest, directly or through a subsidiary, in a retailer maintaining sales locations in Arkansas or is owned in whole or in substantial part by such a retailer or by a parent or subsidiary of the retailer; and

(B) The vendor sells the same or a substantially similar line of products as the Arkansas retailer under the same or a substantially similar business name, or the facilities or employees of the Arkansas retailer are used to advertise or promote sales by the vendor to Arkansas purchasers.

(4) As used in this section, “substantial ownership interest” in an entity means that degree of ownership of equity interests in an entity that is not less than that degree of ownership specified by 26 U.S.C. § 267, as in effect on January 1, 2001, with respect to a person other than a director or officer.

(b) Nothing in this section shall be construed to repeal any exemption from the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or this subchapter.

History. Acts 1949, No. 487, § 8; 1957, No. 19, §§ 3, 4; A.S.A. 1947, §§ 84-3108, 84-3108n; Acts 1997, No. 951, § 31; 2001, No. 922, § 1; 2003, No. 1273, § 26.

Amendments. The 2003 amendment redesignated former (a)(1) as present (a)(1)(A) and (a)(1)(B); in present (a)(1)(A), inserted “or taxable services”; in (a)(1)(B), inserted “and taxable services” and “or services”; and added (a)(1)(C).

Effective Dates. Acts 2001, No. 922, § 2, provided “The provisions of this act shall be effective on and after January 1, 2002.”

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Stream-

lined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is

otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed

date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-53-125. Return and payment of tax.

(a)(1)(A) The tax imposed by this subchapter shall be due and payable to the Director of the Department of Finance and Administration monthly on or before the twentieth day of each month except as provided in this subchapter.

(B) When a taxpayer has become liable to file a report with the director, the taxpayer must continue to file a report, even though no tax is due, until the taxpayer notifies the director in writing that the taxpayer is no longer liable for those reports.

(2) Every vendor selling tangible personal property or taxable services for storage, use, distribution, or consumption in this state shall file with the director on or before the twentieth day of each month a sales and use tax return for the preceding monthly period in such form as may be prescribed by the director, showing:

(A) The total tax levied by this subchapter due on all tangible personal property or taxable services sold by the vendor during the preceding monthly period, the storage, use, distribution, or consumption of which is subject to the tax levied by this subchapter; and

(B) Such other information as the director may deem necessary for the proper administration of this subchapter.

(3) The return shall be accompanied by remittance of the amount of the tax required by this subchapter to be collected by the vendor during the period covered by the return.

(4)(A) A return shall be signed by the vendor or the vendor's duly authorized agent but need not be verified by oath.

(B) A return filed electronically does not need to be signed.

(b)(1) Every person purchasing tangible personal property or taxable services of which the storage, use, distribution, or consumption is subject to the tax levied by this subchapter and who has not paid the tax due with respect to the tangible personal property or taxable services to a vendor registered in accordance with the provisions of §§ 26-53-121 and 26-53-122 shall file a return with the director on or before the twentieth day of each month for the preceding monthly period in such a form as may be prescribed by the director showing:

(A) The tax levied by this subchapter due on the tangible personal property or taxable services purchased during the preceding monthly period; and

(B) Such other information as the director may deem necessary for the proper administration of this subchapter.

(2) The return shall be accompanied by a remittance of the amount of the tax required by this subchapter to be paid by the person purchasing the tangible personal property or taxable services during the period covered by the return.

(3)(A) A return shall be signed by the person liable for the tax or the person's authorized agent but need not be verified by oath.

(B) A return filed electronically does not need to be signed.

(c) A vendor that does not have a legal requirement to register under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or this subchapter and is not using a certified service provider or a certified automated system as defined under the Uniform Sales and Use Tax Administration Act, § 26-20-101 et seq., shall submit sales and use tax returns as follows:

(1) Upon registration, the director shall provide the vendor the required Arkansas returns;

(2) The vendor shall file a return any time within one (1) year of the month of initial registration, and future returns may be required on an annual basis in succeeding years; and

(3) In addition to the returns required in subdivision (c)(2) of this section, the vendor may be required to submit returns in the month following any month in which the vendor has accumulated state and local tax funds in the total amount of one thousand dollars (\$1,000) or more.

(d)(1) When the average amount of tax for which the taxpayer is liable for the previous fiscal year beginning on July 1 and ending on June 30 does not exceed one hundred dollars (\$100) per month, the director may notify the taxpayer that a quarterly report and remittance in lieu of a monthly report may be made on or before July 20, October 20, January 20, and April 20 of each year for the preceding three-month period.

(2) When the average amount of tax for which the taxpayer is liable for the previous fiscal year beginning on July 1 and ending on June 30 does not exceed twenty-five dollars (\$25.00) per month, the director may notify the taxpayer that a yearly report and remittance in lieu of a monthly report may be made on or before January 20 of each year for the preceding twelve-month period.

(e) Any report or remittance required under this section of which the due date falls on a Saturday, Sunday, or legal holiday shall be postmarked or transmitted on the next succeeding business day that is not a Saturday, Sunday, or legal holiday.

History. Acts 1949, No. 487, § 9; 1979, No. 915, § 2; A.S.A. 1947, § 84-3109; Acts 1991, No. 688, § 3; 2003, No. 664, §§ 3, 4; 2003, No. 1273, §§ 27-30; 2007, No. 181, § 35.

Amendments. The 2003 amendment by No. 664 redesignated former (a)(1) as (a)(1)(A) and (a)(1)(B); inserted "except as provided in this subchapter" in (a)(1)(A); and added present (d).

The 2003 amendment by No. 1273, in (a)(2), twice inserted "or taxable services" and "distribution"; redesignated former (a)(4) as present (a)(4)(A) and inserted "or her"; added (a)(4)(B); in (b)(1), inserted "or services," "distribution" and "or taxable services"; inserted "or taxable services" in (b)(2); redesignated former (b)(3) as present (b)(3)(A) and inserted "or her"; added (b)(3)(B); and added present (c) and (e) and redesignated former (c) as present (d).

The 2007 amendment substituted "a sales and use tax return" for "a return" in (a)(2); substituted "total tax levied by this subchapter due on" for "total combined sales price of" in (a)(2)(A) and for similar language in (b)(1)(A); and made stylistic changes.

Effective Dates. Acts 2003, No. 664, § 5; Aug. 1, 2003. Effective date clause provided: "This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days."

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this

act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 181, § 45, provided:
 "Section 1 through 43 of this act are effective on January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Taxation, Sales and Use Tax, 26
 Legislation, 2003 Arkansas General Assembly, U. Ark. Little Rock L. Rev. 498.

CASE NOTES

Cited: American Television Co. v. (1973); Federal Express Corp. v. Skelton,
 Hervey, 253 Ark. 1010, 490 S.W.2d 796 265 Ark. 187, 578 S.W.2d 1 (1979).

26-53-126. Tax on new and used motor vehicles, trailers, or semitrailers — Payment and collection.

(a)(1)(A)(i) All new and used motor vehicles, trailers, or semitrailers required to be licensed in this state shall be subject upon being registered in this state to the tax levied in this subchapter and all other use taxes levied by the state irrespective of whether such motor vehicle, trailer, or semitrailer was purchased from a dealer or an individual.

(ii) The tax shall be paid to the Director of the Department of Finance and Administration by the person making application to register the motor vehicle, trailer, or semitrailer instead of being collected by the dealer or individual seller.

(iii) It shall be the mandatory duty of the director to collect the tax before issuing a license for any motor vehicle, trailer, or semitrailer.

(B) The exemption provided for in § 26-52-401(17) for isolated sales shall not apply to the sale of motor vehicles, trailers, and semitrailers.

(2)(A) The tax levied in this subchapter and all other use taxes levied by the state shall be paid on or before the time for registration as prescribed by § 27-14-903(a).

(B)(i) Failure to pay the tax when due shall result in an assessment of a penalty equal to ten percent (10%) of the amount of tax due.

(ii) The penalty must be paid to the director along with the tax before the vehicle license will be issued.

(b)(1) When a used motor vehicle, trailer, or semitrailer is taken in trade as a credit or part payment on the sale of a new or used vehicle, trailer, or semitrailer, the tax levied in this subchapter and all other use taxes levied by the state shall be paid on the net difference between the total consideration for the new or used vehicle, trailer, or semitrailer sold and the credit for the used vehicle, trailer, or semitrailer taken in trade.

(2) However, if the total consideration for the sale of the new or used motor vehicle, trailer, or semitrailer is less than two thousand five hundred dollars (\$2,500), no tax shall be due.

(3)(A) When a used motor vehicle, trailer, or semitrailer is sold by a consumer, rather than traded in as a credit or part payment on the

sale of a new or used motor vehicle, trailer, or semitrailer, and the consumer subsequently purchases a new or used vehicle, trailer, or semitrailer of greater value within forty-five (45) days of the sale, the tax levied by this chapter and all other gross receipts taxes levied by the state shall be paid on the net difference between the total consideration for the new or used vehicle, trailer, or semitrailer purchased subsequently and the amount received from the sale of the used vehicle, trailer, or semitrailer sold in lieu of a trade-in.

(B)(i) Upon registration of the new or used motor vehicle, consumers claiming the deduction provided by subdivision (b)(3)(A) of this section shall provide a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle.

(ii) A copy of the bill of sale shall be deposited with the revenue office at the time of registration of the new or used motor vehicle.

(iii) The deduction provided by this subdivision (b)(3) shall not be allowed unless the taxpayer claiming the deduction provides a copy of a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle.

(C) If the taxpayer claiming the deduction provided in this subdivision (b)(3) fails to provide a bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller for the vehicle, tax shall be due on the total consideration paid for the new or used vehicle, trailer, or semitrailer without any deduction for the value of the item sold.

(c) The tax imposed by this subchapter shall not apply to a motor vehicle, trailer, or semitrailer to be registered by a bona fide nonresident of this state.

(d) Nothing in this section shall be construed to repeal any exemption from this subchapter.

(e)(1) Upon payment of all applicable registration and title fees, any motor vehicle dealer licensed pursuant to § 27-14-601(a)(6) who has purchased a used motor vehicle may register the vehicle for the sole purpose of obtaining a certificate of title to the vehicle without payment of use tax.

(2) No license plate shall be provided with such registration, and the used vehicle titled by a dealer under this subsection may not be operated on the public highways unless there is displayed on the used vehicle a dealer's license plate issued under the provisions of § 27-14-601(a)(6)(B)(ii).

(f)(1)(A) For purposes of this section, the total consideration for a used motor vehicle shall be presumed to be the greater of the actual sales price as provided on a bill of sale, invoice or financing agreement, or the average loan value of the vehicle as listed in the most current edition of a publication which is generally accepted by the industry as providing an accurate valuation of used vehicles.

(B) If the published loan value exceeds the invoiced price, then the taxpayer must establish to the director's satisfaction that the price reflected on the invoice or other document is true and correct.

(C) If the director determines that the invoiced price is not the actual selling price of the vehicle, then the total consideration will be deemed to be the published loan value.

(2)(A) For purposes of this section, the total consideration for a new or used trailer or semitrailer shall be the actual sales price as provided on a bill of sale, invoice, or financing agreement.

(B) The director may require additional information to conclusively establish the true selling price of the trailer.

History. Acts 1949, No. 487, § 5; 1957, No. 19, § 4; 1959, No. 260, §§ 2, 3; A.S.A. 1947, §§ 84-3105, 84-3105n., 84-3108n; Acts 1991, No. 3, § 7; 1995, No. 268, § 7; 1995, No. 437, § 3; 1997, No. 1232, §§ 3, 4; 2001, No. 1047, § 2.

A.C.R.C. Notes. Section 26-52-514 provides that the Director of the Department of Finance and Administration is authorized to adopt an alternative method for determining the total consideration for

the sale of new or used motor vehicles, trailers, or semitrailers under this section. See § 26-52-514 concerning such alternative method.

Cross References. Damaged vehicle exemption from sales or use tax, § 27-14-2306.

Effective Dates. Acts 1997, No. 1232, § 5 provided that the provisions of this act shall become effective on January 1, 1998.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

CASE NOTES

ANALYSIS

Construction.
Legislative Intent.

Construction.

Defendant's conduct in failing to pay use taxes on a motor home fell within § 26-18-202; defendant was not accused of having violated a provision of the vehicle registration laws, and the taxes re-

quired under this section are not exempt from the tax evasion laws. *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003).

Legislative Intent.

The amendment of this section by Acts 1995, No. 268 was not an attempt by the legislature to retroactively change subsection (a) of this section or § 26-52-510(a). *Pledger v. Mid-State Constr. & Materials, Inc.*, 325 Ark. 388, 925 S.W.2d 412 (1996).

26-53-127. Refunds to governmental agencies.

A governmental agency may apply to the Director of the Department of Finance and Administration for refund of the amount of the tax levied and paid upon sales to it for food and food ingredients used for free distribution to the poor and needy or to public penal and eleemosynary institutions, as provided by law.

History. Acts 1949, No. 487, § 6; 1971, No. 222, § 3; A.S.A. 1947, § 84-3106; Acts 2007, No. 181, § 36.

Amendments. The 2007 amendment substituted "food and food ingredients" for "foodstuffs."

Effective Dates. Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

CASE NOTES

ANALYSIS

Constitutionality.
In General.
Construction.
Appeals.
Burden of Proof.

Constitutionality.

This section is not unconstitutional on the ground that General Assembly in granting exemptions acted in an arbitrary manner. *Teague v. Scurlock*, 223 Ark. 271, 265 S.W.2d 528 (1954).

In General.

A governmental agency may apply in certain instances for a refund, but an agency cannot apply for a refund if it has not previously paid the tax. *Commissioner of Revenues v. Arkansas State Hwy. Comm'n*, 232 Ark. 255, 337 S.W.2d 665 (1960).

Construction.

Tax exemption provisions must be strictly construed. *C. J. C. Corp. v. Cheney*, 239 Ark. 541, 390 S.W.2d 437 (1965).

Any tax exemption provision must be strictly construed against the exemption, and to doubt is to deny the exemption. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark.

71, 593 S.W.2d 178 (1980); *Qualls v. Georgia-Pacific Corp.*, 269 Ark. 426, 602 S.W.2d 646 (1980).

Appeals.

On appeal, the Supreme Court reviews tax exemption cases de novo and does not reverse a finding of fact unless it is clearly against the preponderance of the evidence. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980).

Burden of Proof.

Since taxation is the rule and exemption the exception, the burden is on taxpayers to clearly show they are entitled to exemption from the use tax. *Cheney v. Georgia-Pacific Paper Corp.*, 237 Ark. 161, 371 S.W.2d 843 (1963).

There is a presumption in favor of the taxing power of the state, and a claimant has the burden to clearly establish any right to an exemption. *C. J. C. Corp. v. Cheney*, 239 Ark. 541, 390 S.W.2d 437 (1965).

Taxpayer has the burden of clearly establishing an exemption beyond a reasonable doubt. *S.H. & J. Drilling Corp. v. Qualls*, 268 Ark. 71, 593 S.W.2d 178 (1980).

Cited: *American Television Co. v. Hervey*, 253 Ark. 1010, 490 S.W.2d 796 (1973); *Heath v. Midco Equip. Co.*, 256 Ark. 14, 505 S.W.2d 739 (1974).

26-53-128. Tax — A lien upon property.

The tax or excise levied by this subchapter shall constitute a lien upon the property of the purchaser of tangible personal property coming within the provisions of this subchapter.

History. Acts 1949, No. 487, § 5; 1957, No. 19, § 2; 1959, No. 260, § 2; A.S.A. 1947, § 84-3105.

26-53-129. Suits for violations of subchapter — Agent for service.

(a) In all suits brought in any of the courts of this state by the Director of the Department of Finance and Administration against any vendor for any violation of this subchapter, the suits shall be brought thereon in any courts of this state having jurisdiction of the subject matter.

(b)(1) Every vendor shall designate with the director an agent for service within this state for the purpose of enforcing this subchapter.

(2) If a vendor has not designated or shall fail to designate with the director an agent for service within this state, then the Secretary of State shall be deemed the agent for service, or any agent or employee of the vendor within this state shall be deemed agent for service.

History. Acts 1949, No. 487, § 11;
A.S.A. 1947, § 84-3111.

26-53-130. Exemption for aircraft and railroad equipment in state for refurbishing, etc.

(a) The General Assembly determines that:

(1) It was not the intent of this subchapter to impose the compensating use tax upon aircraft, aircraft equipment, and railroad parts, cars, and equipment, or on any tangible personal property owned or leased by aircraft, airmotive, or railroad companies, as provided in §§ 26-53-106 and 26-53-115 and as classified by this section; and

(2) Any claim that the State of Arkansas now has for collection of compensating use taxes upon any aircraft, aircraft equipment, and railroad parts, cars, and equipment, or on tangible personal property owned or leased by aircraft, airmotive, or railroad companies brought into the State of Arkansas solely and exclusively for refurbishing, conversion, or modification shall not be collected, whether the claim is pending in the Revenue Division of the Department of Finance and Administration or is pending and unpaid as a result of any court litigation or court decision of this state.

(b) It is the intent of the General Assembly that the State of Arkansas should not pursue the collection of any claim now pending or the execution of any court order with respect to any claim for the collection of compensating use taxes upon such property.

(c) No person shall have a claim against the State of Arkansas for any compensating use tax paid to the State of Arkansas on or before April 7, 1987, with respect to this tangible personal property.

History. Acts 1987, No. 772, § 2.

26-53-131. Credit for tax paid in another state.

(a)(1)(A)(i) The provisions of this subchapter shall not apply to any tangible personal property or taxable services used, consumed, distributed, or stored in this state upon which a like tax equal to or greater than the tax imposed by this subchapter has been paid in another state.

(ii) Proof of payment of such a tax shall be made according to the rules and regulations promulgated by the Director of the Department of Finance and Administration.

(B) If the amount of tax paid in another state is less than the amount of Arkansas compensating tax imposed on the property or services by this subchapter, then the taxpayer shall pay to the director an amount of Arkansas compensating tax sufficient to make

the combined amount of tax paid in the other state and this state equal to the total amount of Arkansas compensating tax that would be due if no tax on the property or services had been paid to any other state.

(2) No credit shall be given under this section for taxes paid on such property or services in another state if that state does not grant credit for taxes paid on similar tangible personal property or services in this state.

(b) The provisions of this section shall be cumulative to the provisions of this subchapter and shall not be construed as repealing or modifying any of the provisions of this subchapter.

(c)(1) No credit shall be allowed for sales or use taxes paid to another state with respect to the purchase of motor vehicles, trailers, or semitrailers which are first registered by the purchaser in Arkansas.

(2) This subsection shall apply to all motor vehicles, trailers, or semitrailers purchased on or after November 3, 1989.

History. Acts 1989, No. 395, § 3; 1989 (3rd Ex. Sess.), No. 9, § 2; 2003, No. 1273, § 31.

Amendments. The 2003 amendment redesignated former (a)(1) as (a)(1)(A) and (a)(1)(B); inserted "or taxable services" in present (a)(1)(A); and inserted "or services" in (a)(1)(b) and twice in (a)(2).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agree-

ment went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-53-132. Refund for construction of child care facility.

(a) A business which operates, or contracts for the operation of, a child care facility for the primary purpose of providing child care services to its employees may obtain a refund of the compensating use tax paid on the purchase of construction materials and furnishings used in the initial construction and equipping of the child care facility after the facility is licensed pursuant to § 20-78-201 et seq.

(b)(1) "Child care facility" means a child care facility licensed pursuant to § 20-78-201 et seq. To qualify as a child care facility, the child care must provide an appropriate early childhood program as defined in § 6-45-103.

(2) A child care facility may be operated for the use of one (1) or more employers.

History. Acts 1993, No. 820, § 2; 1993, No. 987, § 2; 1995, No. 850, § 4.

Cross References. Certification by the Department of Education, § 6-45-109.

26-53-133. Exemption for manufacturing forms.

Forms constructed of plaster, cardboard, fiberglass, natural fibers, synthetic fibers, or composites thereof which determine the physical characteristics of an item of tangible personal property and which are destroyed or consumed during the manufacture of the item for which the destroyed or consumed form was built are hereby exempt from the taxes levied in this subchapter.

History. Acts 1993, No. 1001, § 1.

Publisher's Notes. Acts 1993, No. 1001, § 1, is also codified as § 26-52-422.

26-53-134. Exemption for natural gas used in manufacture of glass.

The gross receipts or gross proceeds derived from sales of natural gas used as fuel in the process of manufacturing glass is hereafter exempt from:

(1) The Arkansas gross receipts tax levied by §§ 26-52-301 and 26-52-302;

(2) The Arkansas compensating use tax levied by §§ 26-53-106 and 26-53-107; and

(3) All city and county sales and use taxes.

History. Acts 1993, No. 1140, § 1; 2007, No. 182, § 24.

Publisher's Notes. Acts 1993, No. 1140, § 1, is also codified as §§ 26-52-423, 26-74-102, and 26-75-101.

Amendments. The 2007 amendment

substituted "§§ 26-52-301 and 26-52-302" for "§§ 26-52-301, 26-52-302, and 26-52-1002."

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-53-135. Exemption for sales to Fort Smith Clearinghouse.

The gross receipts or gross proceeds derived from sales to the Community Service Clearinghouse, Inc., of Fort Smith are hereafter exempt from:

- (1) The Arkansas gross receipts tax levied by §§ 26-52-301, 26-52-302, and 26-63-402;
- (2) The Arkansas compensating use tax levied by §§ 26-53-106 and 26-53-107; and
- (3) All city and county sales and use taxes.

History. Acts 1993, No. 913, § 1; 2007, No. 182, § 25.

Publisher's Notes. Acts 1993, No. 913, § 1, is also codified as §§ 26-52-424, 26-74-103, and 26-75-102.

Amendments. The 2007 amendment substituted "26-63-402" for "26-52-1002."

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-53-136. Exemption for nonprofit food distribution agencies.

The gross receipts or gross proceeds derived from the sale of food and food ingredients to nonprofit agencies organized under the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq., for free distribution to the poor and needy shall be exempt from the Arkansas gross receipts tax levied by this subchapter.

History. Acts 1993, No. 1144, § 1; 2007, No. 181, § 37.

Publisher's Notes. Acts 1993, No. 1144, § 1, is also codified as § 26-52-421.

Amendments. The 2007 amendment

substituted "food and food ingredients" for "foodstuffs."

Effective Dates. Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

26-53-137. Exemption for railroad rolling stock manufactured for use in interstate commerce.

Railroad rolling stock manufactured for use in transporting persons or property in interstate commerce is exempt from the taxes levied in this subchapter.

History. Acts 1994 (2nd Ex. Sess.), No. 25, § 2.

26-53-138. Exemption for property purchased for use in performance of construction contract.

(a) A contractor that purchases tangible personal property which becomes a recognizable part of a completed structure or improvement to real property and which is purchased for use or consumption in the performance of construction contracts shall be entitled to a rebate on any additional gross receipts tax or compensating use tax levied by the state or any city or county if:

- (1) The construction contract for which the tangible personal property was purchased is entered into prior to the effective date of the levy

of the additional state, city, or county gross receipts tax or compensating use tax; and

(2) The contractor paid the additional gross receipts or compensating use tax to the seller.

(b) As used in this section, “construction contract” means a contract to construct, manage, or supervise the construction, erection, or substantial modification of a building or other improvement or structure affixed to real property. “Construction contract” shall not mean a contract to produce tangible personal property.

(c) The rebate provided by this section shall apply to tangible personal property purchased within five (5) years from the effective date of the levy of the additional state, city, or county gross receipts tax or compensating use tax.

(d) The rebate provided by this section shall not apply to cost-plus contracts which allow the contractor to pass any additional tax on to the principal as a part of the contractor’s costs.

(e) Interest shall not accrue or be paid on an amount subject to a claim for rebate pursuant to this section.

(f) The Director of the Department of Finance and Administration shall promulgate rules and prescribe forms for claiming a rebate as provided by this section.

History. Acts 1995, No. 387, §§ 1-3; 2007, No. 181, § 38.

Publisher’s Notes. Acts 1995, No. 387, §§ 1-3 are also codified as § 26-52-427.

Amendments. The 2007 amendment, in (a), substituted “A contractor that purchases tangible personal property” for “Tangible personal property,” added (a)(2) and redesignated part of the provisions of (a) as (a)(1), and substituted “entitled to a

rebate on” for “exempt from,” inserted “tangible personal” in (a)(1); substituted “rebate” for “exemption” in (b); substituted “rebate provided by this section” for “exemption” in (d); added (e) and (f); and made related and stylistic changes.

Effective Dates. Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

26-53-139. Exemption for railroad parts, cars, and equipment.

There is specifically exempted from any tax imposed by this subchapter including, but not limited to, §§ 26-53-106 — 26-53-108, parts and other tangible personal property incorporated into or which ultimately become a part of railroad parts, railroad cars, and equipment brought into the State of Arkansas solely and exclusively for the purpose of being repaired, refurbished, modified, or converted within this state.

History. Acts 1995, No. 848, § 2.

Publisher’s Notes. This section was formerly codified as § 26-52-116.

26-53-140. Tax levied on sales of prepaid telephone calling cards.

Purchases of prepaid telephone calling cards or prepaid authorization numbers and the recharge of prepaid telephone calling cards or prepaid

authorization numbers as set out in § 26-52-314 shall be subject to this subchapter and any act supplemental to this subchapter.

History. Acts 1999, No. 1348, § 3.

26-53-141. Durable medical equipment, mobility-enhancing equipment, prosthetic devices, and disposable medical supplies.

(a)(1) Gross receipts or gross proceeds derived from the rental, sale, or repair of durable medical equipment prescribed by a physician, mobility-enhancing equipment prescribed by a physician, a prosthetic device prescribed by a physician, and disposable medical supplies prescribed by a physician shall be exempt from all state and local sales and use taxes.

(2) This exemption shall apply only to durable medical equipment, mobility-enhancing equipment, a prosthetic device, and disposable medical supplies sold to a specific patient pursuant to a prescription written before the sale.

(b) As used in this section:

(1) "Disposable medical supplies" includes without limitation the following:

(A) Ostomy, urostomy, and colostomy supplies;

(B) Enemas, suppositories, and laxatives used in routine bowel care; and

(C) Disposable undergarments and linen savers;

(2)(A) "Durable medical equipment" means equipment, including repair and replacement parts for the equipment, that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury;

(iv) Is not worn in or on the body; and

(v) Is for home use.

(B) "Durable medical equipment" does not include mobility-enhancing equipment;

(3)(A) "Mobility-enhancing equipment" means equipment, including repair and replacement parts for the equipment, that:

(i) Is primarily and customarily used to provide or increase the ability to move from one (1) place to another and which is appropriate for use either in a home or a motor vehicle;

(ii) Is not generally used by a person with normal mobility; and

(iii) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(B) "Mobility-enhancing equipment" does not include durable medical equipment;

(4) "Physician" means a person licensed under § 17-95-401 et seq.;

(5) "Prescription" means an order, formula, or recipe issued in any form and transmitted by an oral, written, electronic, or other means of

transmission by a duly licensed physician or practitioner authorized to issue prescriptions under Arkansas law; and

(6)(A) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:

- (i) Artificially replace a missing portion of the body;
- (ii) Prevent or correct physical deformity or malfunction; or
- (iii) Support a weak or deformed portion of the body.

(B) "Prosthetic device" does not include corrective eyeglasses, contact lenses, and dental prostheses.

(c)(1) Notwithstanding subdivision (a)(2) of this section, a patient may claim the exemption under this section for a wheelchair lift or automobile hand controls prescribed for the patient after the sale if:

(A) The wheelchair lift or automobile hand controls are purchased in conjunction with the purchase of a motor vehicle;

(B) The gross receipts or gross proceeds derived from the sale of the wheelchair lift or automobile hand controls are separately stated on the invoice or bill of sale for the purchase of the motor vehicle; and

(C) The patient has a prescription for the wheelchair lift or automobile hand controls at the time the motor vehicle is registered.

(2) A patient purchasing a wheelchair lift or automobile hand controls directly from a vendor of adaptive medical equipment for subsequent installation shall possess a prescription for the wheelchair lift or automobile hand controls prior to the sale in compliance with subdivision (a)(2) of this section.

History. Acts 1991, No. 414, § 1; 2003, No. 1273, § 2; 2003, No. 1473, § 64; 2007, No. 140, §§ 3, 4; 2007, No. 181, § 45; 2007, No. 860, § 6.

A.C.R.C. Notes. This section was formerly codified as § 26-3-307. Former § 26-3-307 was recodified by Acts 2003, No. 1473, § 64, as present §§ 26-52-433 and 26-53-141.

Amendments. The 2003 amendment by No. 1273 rewrote the section.

The 2007 amendment by No. 140, § 3 added (d). Section 4 added (c).

The 2007 amendment by No. 181 inserted "prosthetic devices" in the section heading; inserted "a prosthetic device prescribed by a physician" in (a)(1), rewrote (a)(2), and deleted former (a)(3); rewrote (b)(1), added (b)(2)(B) and redesignated the remaining subdivisions of (b)(2) accordingly, deleted former (b)(3)(B) and replaced it with present (b)(3)(B), added (b)(5), substituted "Prosthetic device" or similar language for "Prosthetics" in present (b)(6)(A) and (b)(6)(B); and made related and stylistic changes.

The 2007 amendment by No. 860 deleted former (b)(1)(B) and redesignated the remaining subsections accordingly; added (b)(2)(A)(v); and made related changes.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have

petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated

that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 140, § 5: Oct. 1, 2007. Effective date clause provided: "Effective date. Sections 1–4 of this act are effective on the first day of the calendar quarter following the effective date of this act."

Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

Acts 2007, No. 860 § 7, provided: "Sections 1–6 of this act will become effective on January 1, 2008."

RESEARCH REFERENCES

A.L.R. Sales and use tax exemption for medical supplies. 30 A.L.R.5th 494.

26-53-142. Fire protection equipment and emergency equipment.

(a) The gross receipts or gross proceeds derived from a purchase of or repair to fire protection equipment and emergency equipment to be owned by and exclusively used by a volunteer fire department are exempt from the taxes levied under:

- (1) The Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.;
- (2) This subchapter; and
- (3) All other state, local, and county sales and use taxes.

(b) The gross receipts or gross proceeds derived from a purchase of supplies and materials to be used in the construction and maintenance of volunteer fire departments, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith are exempt from the taxes levied under:

- (1) The Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.;
- (2) This subchapter; and
- (3) All other state, local, and county sales and use taxes.

History. Acts 1995, No. 1010, § 1; 1997, No. 441, § 1; 2003, No. 1473, § 65.

A.C.R.C. Notes. This section was formerly codified as § 26-3-309. Former

§ 26-3-309 was recodified by Acts 2003, No. 1473, § 65, as present §§ 26-52-434 and 26-53-142.

26-53-143. Wall and floor tile manufacturers.

(a) The gross receipts or gross proceeds derived from sales of electricity and natural gas used in the process of manufacturing wall and floor tile by manufacturers of tile classified in Standard Industrial Classification 3253 are exempt from:

(1) The Arkansas gross receipts tax levied by §§ 26-52-301 and 26-52-302;

(2) The Arkansas compensating use tax levied by §§ 26-53-106 and 26-53-107; and

(3) All city and county sales and use taxes.

(b) A manufacturer of wall or floor tile classified in Standard Industrial Classification 3253 must have begun construction of a manufacturing facility in the state prior to January 1, 2003, in order to claim this exemption.

History. Acts 2001, No. 1375, § 1; 2003, No. 1473, § 66; 2007, No. 182, § 26.

A.C.R.C. Notes. This section was formerly codified as § 26-3-310. Former § 26-3-310 was recodified by Acts 2003, No. 1473, § 66, as present §§ 26-52-435 and 26-53-143.

Amendments. The 2007 amendment substituted “§§ 26-52-301 and 26-52-302” for “§§ 26-52-301, 26-52-302, and 26-52-1002.”

Effective Dates. Acts 2001, No. 1375, § 2: July 1, 2003.

Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-53-144. Certain classes of trucks or trailers.

(a) As used in this section:

(1) “Person” means a natural person who resided in this state at the time of purchasing a truck tractor or semitrailer in another state;

(2) “Semitrailer” means every vehicle with or without motive power, including a pole trailer, drawn by a truck tractor and designed for carrying property; and

(3) “Truck tractor” means a motor vehicle:

(A) Designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn; and

(B) Registered as a Class Five, Class Six, Class Seven, or Class Eight truck as defined by § 27-14-601(a)(3).

(b) Except as provided in subsection (d) of this section, the gross receipts or gross proceeds in excess of nine thousand one hundred fifty dollars (\$9,150) derived from the sale of a new or used truck tractor in another state for use in this state are exempt from the Arkansas compensating use tax levied by this subchapter.

(c) Except as provided in subsection (d) of this section, the gross receipts or gross proceeds in excess of one thousand dollars (\$1,000) derived from the sale of a new or used semitrailer in another state for use in this state are exempt from the Arkansas compensating use tax levied by this subchapter.

(d) The exemption in this section does not apply to compensating use taxes levied by any Arkansas city, town, or county.

History. Acts 2003, No. 551, § 2.

26-53-145. Food and food ingredients.

(a)(1) The Director of the Department of Finance and Administration shall determine the following conditions:

(A) That federal law authorizes the state to collect sales and use tax from some or all of the sellers that have no physical presence in the State of Arkansas and that make sales of taxable goods and services to Arkansas purchasers;

(B) That initiating the collection of sales and use tax from these sellers would increase the net available general revenues needed to fund state agencies, services, and programs; and

(C)(i) That during a six-month consecutive period, the amount of net available general revenues attributable to the collection of sales and use tax from sellers that have no physical presence in the State of Arkansas is equal to or greater than one hundred fifty percent (150%) of sales and use tax collected under subsection (c) of this section and § 26-52-317 on food and food ingredients.

(ii) The director shall make the determination under subdivision (a)(1)(C)(i) of this section on a monthly basis following the determination that the conditions under subdivision (a)(1)(A) of this section have been met.

(2) When the director finds that all of the conditions in subdivision (a)(1) of this section have been met, then the compensating use taxes levied under subsection (c) of this section shall be levied at the rate of zero percent (0%) on the sale of food and food ingredients beginning on the first day of the second calendar month following the determination of the director.

(b) As used in this section:

(1) "Alcoholic beverage" means a beverage that is suitable for human consumption and contains five-tenths of one percent (0.5%) or more of alcohol by volume;

(2) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one (1) or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subdivision (b)(2)(A), and is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not

represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(B) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36, as it existed on January 1, 2007;

(3)(A) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(B) "Food and food ingredients" does not include an alcoholic beverage, tobacco, a dietary supplement, or prepared food;

(4)(A) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii)(a) Food sold with an eating utensil provided by the seller, including a plate, knife, fork, spoon, glass, cup, napkin, or straw.

(b) As used in this subdivision (b)(4)(A)(iii), "plate" does not include a container or packaging used to transport the food.

(B) "Prepared food" does not include food that is only cut, repackaged, or pasteurized by the seller, or eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer to prevent food-borne illnesses as recommended by the Food and Drug Administration in its 2005 Food Code, § 3-401.11, as it existed on January 1, 2007; and

(5) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(c)(1) Beginning July 1, 2007, in lieu of the compensating use taxes levied on food and food ingredients under §§ 26-53-106 and 26-53-107, there is levied a tax on the privilege of storing, using, distributing, or consuming food and food ingredients at the rate of two and seven-eighths percent (2.875%) to be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the taxes, interest, penalties, and costs received by the director under this subdivision (c)(1) shall be deposited into the Educational Adequacy Fund.

(2) The use tax levied under subdivision (c)(1) of this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas compensating use taxes.

(d) The following shall continue to apply to the sales price of food and food ingredients:

(1) The compensating use tax levied under Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county use taxes.

(e) The Department of Finance and Administration shall promulgate rules to implement the provisions of this section.

History. Acts 2005, No. 647, § 2; 2007, No. 110, § 2.

Amendments. The 2007 amendment substituted “subsection (c) of this section and § 26-52-317” for “§§ 26-52-301, 26-52-302(a), (b), and (d), 26-53-106, and 26-53-107(a), (b), and (d)” in (a)(1)(C)(i); sub-

stituted “subsection (c) of this section” for “§§ 26-53-106 and 26-53-107(a), (b), and (d)” in (a)(2); added (b) and (c); redesignated former (b) as present (d); deleted former (b)(1); redesignated former (b)(2) and (b)(3) as present (d)(1) and (d)(2); and redesignated former (c) as present (e).

26-53-146. Exemption for qualified museums.

(a) As used in this section:

(1) “Exemption certificate” means an exemption certificate issued by the Director of the Department of Finance and Administration under subdivision (d)(1) of this section;

(2) “Nonprofit organization” means any organization described in 26 U.S.C. § 501(c)(3), as in effect on January 1, 2005;

(3) “Qualified museum” means any nonprofit organization that acquires a collection of artwork for purposes of establishing and operating a qualified museum facility, regardless of whether the nonprofit organization may engage in any other charitable activities if the:

(A) Fair market value of the artwork collection of the nonprofit organization for public viewing and exhibition at the qualified museum facility exceeds one hundred million dollars (\$100,000,000) prior to January 1, 2013; and

(B) The director has issued an exemption certificate to the nonprofit organization; and

(4) “Qualified museum facility” means a facility, including the structures, buildings, and any ancillary or related structures or buildings and real property associated with the facility, including auditoriums, parking areas, and educational facilities that house a collection of artwork or other exhibits for public viewing and exhibition if the:

(A) Principal location and primary operations of the facility will be within the State of Arkansas;

(B) Museum portion of the facility opens to the public after January 1, 2005, and prior to January 1, 2013; and

(C) Aggregate total costs of the construction and acquisition of the facility exceed thirty million dollars (\$30,000,000) prior to January 1, 2013.

(b)(1) The storage, use, distribution, or consumption of any tangible personal property by a qualified museum is exempt from this subchapter.

(2) The exemption provided in subdivision (b)(1) of this section shall also apply to the storage, use, distribution, or consumption of materials by a qualified museum or its contractor or agent used in the construction, repair, expansion, or operation of the qualified museum facility.

(c) A nonprofit organization requesting recognition as a qualified museum shall file with the director on forms prescribed by the director a written statement under oath:

(1)(A) Describing the facts upon which the nonprofit organization claims the exemption under this section.

(B) This statement shall be filed prior to first claiming the exemption under this section and shall include facts indicating that the nonprofit organization has a good faith plan and intent to satisfy the conditions under subdivision (c)(2) of this section; and

(2) On or before June 30, 2013, stating that the following conditions have been met:

(A) The nonprofit organization has established and operated prior to January 1, 2013, a facility that houses a collection of artwork or other exhibits for public viewing and exhibition;

(B) The principal location and primary operations of the facility are within the State of Arkansas;

(C) The museum portion of the facility first opened to the public after January 1, 2005, and prior to January 1, 2013;

(D) The aggregate total costs of construction and acquisition of the facility, including the structures, buildings, ancillary or related structures or buildings, real property used in connection with the facility, auditoriums, parking areas, and educational facilities exceeded thirty million dollars (\$30,000,000) prior to January 1, 2013; and

(E) Prior to January 1, 2013, the nonprofit organization acquired a collection of artwork with a fair market value in excess of one hundred million dollars (\$100,000,000) for public viewing and exhibition at the qualified museum facility.

(d)(1) After filing the statement required under subdivision (c)(1) of this section, if the director finds that the nonprofit organization has a good faith plan and intent to satisfy the conditions of subdivision (c)(2) of this section prior to January 1, 2013, the director shall issue an exemption certificate to the nonprofit organization within sixty (60) days after the filing of the statement.

(2) The director may revoke the exemption certificate at any time after it is issued if the director determines that the nonprofit organization is unable to satisfy the conditions under subdivision (c)(2) of this section prior to January 1, 2013.

(3) After filing the statement required under subdivision (c)(2) of this section, if the director determines that the nonprofit organization has not met the conditions under subdivision (c)(2) of this section, the director shall revoke the exemption certificate of the nonprofit organization.

(4) If the nonprofit organization fails to file the statement described in subdivision (c)(2) of this section on or prior to June 30, 2013, the director shall revoke the exemption certificate.

(5) Revocation by the director of an exemption certificate shall be retroactive to the date of its issuance subject to subsection (e) of this section.

(e)(1) If the director revokes the exemption certificate, any tax deficiency, related interest, and applicable penalties due under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., this subchapter, or the Arkansas Tax Procedure Act, § 26-18-101 et seq., may be assessed against the nonprofit organization but may not be assessed against a third party that has relied in good faith on the exemption certificate prior to its revocation.

(2) If the director revokes the exemption certificate, any tax deficiency, related interest, and applicable penalties assessed against the nonprofit organization shall also include any tax deficiency, related interest, and applicable penalties assessed on purchases made by the nonprofit organization's contractors and agents for the benefit of the nonprofit organization in reliance on the exemption certificate.

(3)(A) Any assessment by the director under subdivision (e)(1) or subdivision (e)(2) of this section shall be made in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(B) However, the time period for the director to make the assessment is extended to whichever of the following occurs first:

(i) Three (3) years from the date the nonprofit organization files the statement under subdivision (c)(2) of this section; or

(ii) July 1, 2016.

(4) The nonprofit organization may contest any assessment or other determination by the director in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 2005, No. 1865, § 2.

26-53-147. Heavy equipment.

(a) Every person purchasing heavy equipment as defined in § 26-52-318 for storage or use within this state from a dealer located outside of this state and the person does not pay tax to the out-of-state dealer shall be liable for the use tax imposed by this chapter.

(b) The purchaser shall pay the use tax to the Director of the Department of Finance and Administration and receive a decal under § 26-52-318 to affix to each piece of heavy equipment purchased.

(c) If the purchaser pays the use tax to an out-of-state dealer, the purchaser shall present proof to the director that the Arkansas use tax has been paid and receive a decal from the director to affix to each piece of heavy equipment purchased.

History. Acts 2005, No. 1693, § 2.

26-53-148. Natural gas and electricity used by manufacturers.

(a)(1) Beginning July 1, 2007, in lieu of the tax levied in §§ 26-53-106 and 26-53-107(a)-(d), there is levied an excise tax on the sales price of natural gas and electricity purchased by a manufacturer for use directly in the actual manufacturing process at the rate of four and three-eighths percent (4.375%).

(2) Beginning July 1, 2008, the tax rate levied in subdivision (a)(1) of this section shall be imposed at the rate of three and seven-eighths percent (3.875%).

(3) The taxes levied in subsection (a) of this section shall be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the tax, interest, penalties, and costs received by the Director of the Department of Finance and Administration shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Educational Adequacy Fund.

(4)(A) The excise tax levied in this section applies only to natural gas and electricity purchased for use directly in the actual manufacturing process.

(B) Natural gas and electricity purchased for any other purpose shall be subject to the full compensating use tax levied under §§ 26-53-106 and 26-53-107(a)-(d).

(5) The excise tax levied in this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas compensating use taxes.

(b) As used in this section, “manufacturer” means a manufacturer classified within sectors 31 through 33 of the North American Industry Classification System, as in effect on January 1, 2007.

(c) Natural gas and electricity subject to the reduced tax rate levied in this section shall be separately metered from natural gas and electricity used for any other purpose by the manufacturer or otherwise established in accordance with the rules issued under subsection (e) of this section.

(d) Prior to purchasing any natural gas or electricity at the reduced excise tax rate levied in this section, the director may require any seller of natural gas or electricity to obtain a certificate from the consumer, in the form prescribed by the director, certifying that the manufacturer is eligible to purchase natural gas and electricity at the reduced excise tax rate.

(e) The director shall have and be invested with full power and authority to promulgate rules for the proper administration of this section.

(f) The purchase of natural gas and electricity by a manufacturer shall continue to be subject to:

(1) The excise tax levied under the Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county compensating use taxes.

History. Acts 2007, No. 185, § 2.

A.C.R.C. Notes. Acts 2007, No. 185, § 3, provided: "All existing exemptions from the gross receipts tax levied by the Arkansas Gross Receipts Act or 1941, § 26-52-101 et seq., and the compensating

use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., for natural gas or electricity used in manufacturing or other purposes that are otherwise provided by law shall continue in full force and effect."

SUBCHAPTER 2 — CONTRACTORS

SECTION.

26-53-201. Definition.

26-53-202. Subchapter cumulative.

26-53-203. Tangible personal property
procured from without

SECTION.

state for use by contrac-
tors.

26-53-204 — 26-53-206. [Repealed.]

Effective Dates. Acts 1965, No. 125, § 8: Feb. 25, 1965. Emergency clause provided: "Whereas, contractors are deemed to be consumer under the provisions of Act 487 of 1949 (As Amended) but some confusion as to this interpretation has existed, causing a hinderance to the proper administration of the Compensating Tax Law of this State, and it has been found that increased population and increased cost of living have placed heavy demands on funds available for the operation of government, and it is necessary to supplement said funds so that the proper functions of government may be performed. Therefore, in order to provide supplemental funds for the operation of government, and this Act being necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval."

Acts 1967, No. 253, § 2: Mar. 10, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the provisions of Act 125 of 1965 do not adequately provide for allowance to be given contractors coming within the purview of such Act, for similar taxes paid in other states, that the proper and effective administration of such Act will be greatly enhanced by the provision of a reciprocal tax credit allowance given by the State of Arkansas to those out-of-state contractors who have previously paid a compensating tax in another state, provided such other state offers the same tax credit allowance to Arkansas contractors for machinery,

equipment and other personal property brought into their state to fulfill a contract, that such a provision will eliminate an inequity existing in the present law and will provide for better acceptance of our citizens' upon their going into other states to perform contracts, that this Act is immediately necessary in order to correct the situation so as to begin the enforcement of Act 125 of 1965 in a proper, effective and equitable manner. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and welfare, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 951, § 34: Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time.

Acts 1997, No. 951, § 38: Mar. 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that current state tax laws are unclear or confusing, creating difficulty for taxpayers seeking to comply with these tax laws; that the changes made by Sections 25 through 31 of this bill are necessary to provide adequate direction to those taxpayers and to maintain the efficient administration of the Arkansas tax laws; and that the provisions of Sections 25 through 31 of this Act are necessary to effectuate that purpose. Therefore, an

emergency is hereby declared to exist and the provisions of Sections 25 through 31 of this Act being necessary for the preservation of the public peace, health, and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 25 through 31 shall be-

come effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 25 through 31 shall become effective on the date the last house overrides the veto."

26-53-201. Definition.

As used in this subchapter, "contractors" mean consumers of all tangible personal property used or consumed in the performance of a contract in this state and of all tangible personal property stored for use or upon which the contractor may exercise any right or power in this state.

History. Acts 1965, No. 125, § 1; A.S.A. 1947, § 84-3129.

CASE NOTES

Cited: *Heath v. Research-Cottrell, Inc.*, 258 Ark. 813, 529 S.W.2d 336 (1975); *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992).

26-53-202. Subchapter cumulative.

The provisions of this subchapter shall be cumulative to the provisions of the Arkansas Compensating Tax Act, § 26-53-101 et seq.

History. Acts 1965, No. 125, § 6; A.S.A. 1947, § 84-3134.

CASE NOTES

In General.

This subchapter did not repeal § 26-53-114. *Larey v. Wolfe*, 242 Ark. 715, 416 S.W.2d 266 (1967).

26-53-203. Tangible personal property procured from without state for use by contractors.

(a)(1) All tangible personal property which is procured from without this state for use, storage, distribution, or consumption including machinery, equipment, repair or replacement parts, materials, and supplies used, stored, distributed, or consumed by a contractor in the performance of a contract in this state shall be subject to the compensating tax of four and five-tenths percent (4.5%) of the purchase price as provided by the Arkansas Compensating Tax Act, § 26-53-101 et seq., or four and five-tenths percent (4.5%) of its market or book value, whichever is greater, if the property has been subjected to prior use

before coming to rest for use, storage, distribution, or consumption within this state. The four and five-tenths percent (4.5%) compensating tax shall be in addition to any other compensating taxes levied by the State of Arkansas.

(2) The tax shall be due and payable regardless of whether or not any right, title, or interest in the tangible personal property becomes vested in the contractor.

(b) In the case of leases or rentals of tangible personal property by a contractor for use, storage, distribution, or consumption in this state, the contractor shall report and remit the compensating tax on the basis of rental or lease payments made to the lessor of the tangible personal property during the term of the lease or rental, which lease rentals shall be in accordance with written contracts between lessor and lessee furnished to the Director of the Department of Finance and Administration.

(c)(1) The provisions of this subchapter shall not apply in respect to the use, consumption, distribution, or storage of tangible personal property as defined in this subchapter for use or consumption in this state upon which a like tax equal to or greater than the amount imposed by this subchapter has been paid in another state, the proof of payment of the tax to be according to rules and regulations made by the director.

(2) If the amount of tax paid in another state is not at least equal to or greater than the amount of tax imposed by the Arkansas Compensating Tax Act, § 26-53-101 et seq., then the contractor shall pay to the director an amount sufficient to make the tax paid in the other state and this state equal to the total amount of tax due under Arkansas law.

(3) No credit shall be given under this section for taxes paid on the property in another state if that state does not grant credit for taxes paid on similar tangible personal property in this state.

History. Acts 1965, No. 125, § 2; 1967, No. 253, § 1; A.S.A. 1947, § 84-3130; Acts 1997, No. 951, §§ 28-30.

CASE NOTES

ANALYSIS

Constitutionality.
Actions.
Credits.

Constitutionality.

Where the Revenue Division imposed both the sales and use taxes upon the price of the concrete components regardless of whether they were precast within or without the state, there was equal treatment for similarly situated in-state and out-of-state taxpayers in the imposition of the taxes and, as a result, there

was no violation of the commerce clause. *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992), cert. denied, 506 U.S. 826, 113 S. Ct. 82, 121 L. Ed. 2d 46 (1992).

Actions.

Action against nonresident contractor to recover use taxes and penalties for the use of a helicopter in the performance of a contract in this state was dismissed because it was not alleged that the helicopter was procured for use in this state. *Hervey v. Construction Helicopters, Inc.*, 252 Ark. 728, 480 S.W.2d 577 (1972).

Credits.

The payment of a use tax to the state of Oklahoma (a reciprocal state) prior to the time that the property was legally subjected to the tax by the storage, use, or consumption of the property in Oklahoma was a voluntary payment and not the

payment of a "tax" for which a credit will be allowed by the reciprocal credit provision of this section. *Allied Steel Co. v. Larey*, 246 Ark. 1009, 440 S.W.2d 567 (1969).

Cited: *Heath v. Research-Cottrell, Inc.*, 258 Ark. 813, 529 S.W.2d 336 (1975).

26-53-204 — 26-53-206. [Repealed.]

Publisher's Notes. These sections, concerning withholding by general contractors from subcontractors, withholding by political subdivisions from contractors, and nonresident contractors, were repealed by Acts 1991, No. 783, § 12. They were derived from:

26-53-204. Acts 1965, No. 125, § 3; A.S.A. 1947, § 84-3131.

26-53-205. Acts 1965, No. 125, § 4; A.S.A. 1947, § 84-3132.

26-53-206. Acts 1965, No. 125, § 5; A.S.A. 1947, § 84-3133.

SUBCHAPTER 3 — INTERSTATE RECIPROCAL AGREEMENTS

SECTION.

26-53-301. Authorization to enter.

26-53-302. Arrangements for collection and payment.

SECTION.

26-53-303. Waiver of collection and enforcement of taxes.

Effective Dates. Acts 1970 (1st Ex. Sess.), No. 10, § 6: Mar. 13, 1970. Emergency clause provided: "The General Assembly finds that the State of Arkansas is in immediate need of additional funds for general revenue purposes and that considerable revenue can be gained in collecting compensating tax on sales of tangible personal property by retailers of other states to Arkansas residents. Therefore, an emergency is declared to exist, and this Act, being necessary for the preservation of the public health, peace and safety, shall be effective from and after its passage and approval."

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined

Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agree-

ment. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes

necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-53-301. Authorization to enter.

(a) When in the judgment of the Director of the Department of Finance and Administration it is necessary in order to secure the collection of any tax, penalties, or interest due or to become due under this subchapter, the director may negotiate agreements with the tax departments of other states in respect to the collecting, reporting, payment, and enforcement of tax on sales of tangible personal property or taxable services to residents of Arkansas by a retailer maintaining a place of business in the other state.

(b) In consideration of such an agreement, the director may make similar agreements for the collecting, reporting, payment, and enforcement of tax as imposed by the other states on sales of tangible personal property or taxable services to residents of other states by retailers maintaining places of business in Arkansas.

History. Acts 1970 (1st Ex. Sess.), No. 10, § 1; A.S.A. 1947, § 84-3135; Acts 2003, No. 1273, § 32.

Amendments. The 2003 amendment inserted "or taxable services" in (a) and (b).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as deter-

mined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed

date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of

the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-53-302. Arrangements for collection and payment.

The Director of the Department of Finance and Administration, in negotiating an agreement with the tax department of another state, may as part of the agreement provide for reciprocal arrangements whereby the parties collecting the tax in the other state may deduct at the time of making returns to the director such percentage of the amount due and accounted for, which may be retained by the parties reporting as an offset against costs of collecting and reporting as is allowed by such other states to parties in this state collecting the tax for the other state. No such deduction shall be allowed, however, if the amount due is delinquent at the time of the tax payment.

History. Acts 1970 (1st Ex. Sess.), No. 10, § 2; A.S.A. 1947, § 84-3136.

26-53-303. Waiver of collection and enforcement of taxes.

(a) The Director of the Department of Finance and Administration, in negotiating agreements, is authorized by way of compromise to waive the collection and enforcement of taxes on sales to residents of Arkansas made in another state and delivered into Arkansas when such sales were made prior to the effective date of any agreement negotiated.

(b) However, the director in any case shall not be authorized to waive payment and enforcement of the tax in another state unless the tax department of the other state waives collection, payment, and enforcement of their tax in this state in the same manner as the tax payment is waived by this state.

History. Acts 1970 (1st Ex. Sess.), No. 10, § 3; A.S.A. 1947, § 84-3137.

CHAPTER 54

CORPORATE FRANCHISE TAXES

SECTION.

- 26-54-101. Title.
- 26-54-102. Definitions.
- 26-54-103. Effect upon prior rights, etc.
- 26-54-104. Annual franchise tax.

SECTION.

- 26-54-105. Franchise tax reports.
- 26-54-106. [Repealed.]
- 26-54-107. Computation of tax — Penalty — Relief.

SECTION.

- 26-54-108. Taxes and penalties as lien.
- 26-54-109. Lists of corporations to be prepared.
- 26-54-110. Dissolution or withdrawal by corporations.
- 26-54-111. Charter forfeiture for failure to pay tax — Procedure.

SECTION.

- 26-54-112. Reinstatement of corporations.
- 26-54-113. Disposition of funds.
- 26-54-114. Nonpayment of franchise taxes.

Publisher's Notes. Acts 1987, No. 1030, § 6, provided: "Recognizing that Act 19 of 1987 transfers from the Revenue Commissioner to the Secretary of State the duty of collecting corporate franchise taxes, the Revenue Commissioner is hereby authorized to transfer to the Secretary of State such records and documents as are required by the Secretary of State for the implementation of Act 19 of 1987. Any such documents and records that are confidential under present law shall retain their confidentiality upon transfer to the Secretary of State."

Effective Dates. Acts 1979, No. 889, § 16: Jan. 1, 1980.

Acts 1983, No. 863, § 4: Mar. 28, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly of the State of Arkansas that it is essential to the citizens' well-being of this State that public transportation systems be supported by obtaining the maximum Federal funds available to Arkansas; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 19, § 9: Jan. 1, 1988.

Acts 1989, No. 502, § 4: Mar. 13, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that many corporations are formed by attorneys on behalf of clients in order to expedite the establishment of such corporations, that the present § 26-54-105(h)(2) would work a hardship on such expeditious filing, and that the incorporator or the incorporator's agent signing such report would help expedite such filings, and that this act is immediately necessary to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this act being immedi-

ately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, Nos. 1046 and 1140, § 6: Jan. 1, 1992.

Acts 1995, No. 772, § 5: Mar. 24, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the process for collecting franchise tax from dissolved corporations should be revised in order to prevent unnecessary delay in collecting franchise taxes; that this act will require those dissolved corporations to remit taxes upon dissolution thereby preventing such revenue losses. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 479, § 16: Mar. 13, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the limited liability company statute and other acts relating to pass through entities and related laws need amending in order to better reflect the intent and operation of those laws as originally drafted and to be consistent with current trends. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

"Notwithstanding the foregoing, SECTION 10 of this act (§ 4-32-802(c)) shall

only apply to limited liability companies in existence on the effective date of this act in the event an election is made with the Secretary of State to have this provision apply; otherwise, the original § 4-32-802(c) shall apply to limited liability companies existing on the effective date of this act."

Acts 1999, No. 673, § 2: Mar. 17, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that a delay in the effective date of this Act would be after the tax due date and would work irreparable harm upon the proper administration of essential governmental programs. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1037, § 5: Apr. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that a delay in the effective date of this Act would be after the tax due date and would work irreparable harm upon the proper administration of essential governmental programs. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1549, § 2: Apr. 12, 2001. Emergency clause provided: "It is found and determined by the General Assembly that this act is essential to the proper operation of the Secretary of State. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace,

health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003 (2nd Ex. Sess.), No. 94, § 2, provided: "The increased rate of franchise tax provided in Section 1 of this act shall be effective for calendar years beginning January 1, 2004. Taxes due for calendar years prior to 2004 shall remain due and payable at the rates in existence prior to the effective date of this act."

Acts 2003 (2nd Ex. Sess.), No. 94, § 4: July 1, 2004. The amendment was effective by its own terms on July 1, 2004.

Acts 2003 (2nd Ex. Sess.), No. 94, § 6: Mar. 1, 2004. Emergency clause provided: "It is found and determined by the General Assembly, that the provision of an equal opportunity for an adequate education to all the citizens of the state is imperative; that additional funds are immediately needed to provide an equal opportunity for an adequate education; that this act is designed to provide the additional revenues needed to provide this equal opportunity to all citizens; and that a delay in the effective date of this act will cause irreparable harm upon the provision of essential education opportunities and the proper administration of educational programs. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after the date of March 1, 2004."

Acts 2007, No. 865, § 3: Apr. 3, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act concerns the disclosure of certain information in corporate franchise tax reports; that the release of this information to the public at large is harmful to the report's filer; and that this act should become effective as soon as possible to prevent this harm. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by

the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 71 Am. Jur. 2d, State Tax., § 254 et seq.
C.J.S. 84 C.J.S., Tax., § 134.
U. Ark. Little Rock L.J. Brewer, An Overview of the 1987 Arkansas Business

Corporation Act, 10 U. Ark. Little Rock L.J. 431.
 Survey — Corporations, 10 U. Ark. Little Rock L.J. 549.

26-54-101. Title.

This chapter shall be known and may be cited as the "Arkansas Corporate Franchise Tax Act of 1979".

History. Acts 1979, No. 889, § 1; A.S.A. 1947, § 84-1833.

26-54-102. Definitions.

(a) As used in this chapter, "corporation" means any corporation, domestic and foreign, active and inactive, which is organized in or qualified under the laws of the State of Arkansas and includes, but is not limited to, any person or group of persons, any association, joint-stock company, business trust, or other organizations with or without charter constituting a separate legal entity of relationship with the purpose of obtaining some corporate privilege or franchise which is not allowed to them as individuals and which is exercising, or attempting to exercise, corporate-type acts, whether or not existing by virtue of a particular statute.

(b) However, "corporation" does not include:

(1) Nonprofit corporations;

(2) Corporations which are organizations exempt from the federal income tax; or

(3) Organizations formed pursuant to the Uniform Partnership Act, § 4-42-101 et seq. [repealed], or the Uniform Limited Partnership Act, § 4-44-101 et seq. [repealed].

History. Acts 1979, No. 889, § 2; A.S.A. 1947, § 84-1834; Acts 1987, No. 19, § 1.

Publisher's Notes. The Uniform Limited Partnership Act, § 4-44-101 et seq., referred to in this section was repealed by Acts 1991, No. 1175, § 28. For present law, see the Uniform Limited Partnership Act, § 4-47-101 et seq.

Substantially all of the Uniform Part-

nership Act, § 4-42-101 et seq., referred to in this section was repealed by Acts 1999, No. 1518, § 1204, and Acts 2007, No. 15, §§ 8 and 9. Section 4-42-707 concerning use of fictitious names and § 4-42-708 concerning fees have not been repealed. For present law, see the Uniform Partnership Act (1996), § 4-46-101 et seq.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey —
Corporations, 10 U. Ark. Little Rock L.J.
549.

26-54-103. Effect upon prior rights, etc.

This chapter does not affect rights or duties that matured, liabilities or penalties that were incurred, or proceedings begun before January 1, 1980.

History. Acts 1979, No. 889, § 14;
A.S.A. 1947, § 84-1844n.

CASE NOTES

Nonprofit Entities.

Nonprofit agricultural cooperative was immune from corporate franchise tax law although § 2-2-123 revoked cooperative's exemptions from some other state taxes, as tax statute must be made expressly

applicable to entity, and mere removal of some tax exemptions did not allow levying of franchise tax on nonprofit cooperative. *Jefferson Coop. Gin, Inc. v. Milam*, 255 Ark. 479, 500 S.W.2d 932 (1973) (decision under prior law).

26-54-104. Annual franchise tax.

Unless exempted under § 26-54-105, every corporation shall file an annual franchise tax report and pay an annual franchise tax as follows:

(1)(A) Each life, fire, accident, surety, liability, steam boiler, tornado, health, or other kind of insurance company of whatever nature, having an outstanding capital stock of less than five hundred thousand dollars (\$500,000) shall pay three hundred dollars (\$300).

(B) Each such company having an outstanding capital stock of five hundred thousand dollars (\$500,000) or more shall pay four hundred dollars (\$400);

(2)(A) Each legal reserve mutual insurance corporation having assets of less than one hundred million dollars (\$100,000,000) shall pay three hundred dollars (\$300).

(B) Each such corporation having assets of one hundred million dollars (\$100,000,000) or more shall pay four hundred dollars (\$400);

(3) Each mutual assessment insurance corporation shall pay three hundred dollars (\$300);

(4)(A) Each mortgage loan corporation shall pay an amount equivalent to three-tenths of one percent (0.3%) of that proportion of the par value of its outstanding capital stock that its aggregate outstanding loans made in Arkansas bears to the total aggregate outstanding loans made in all states.

(B) No corporation shall pay an annual tax of less than three hundred dollars (\$300);

(5) Each corporation, other than those in subdivisions (2)-(4) of this section, without authorized capital stock shall pay three hundred dollars (\$300);

(6)(A) Each corporation, other than those in subdivisions (1)-(5) of this section, shall pay an amount equivalent to three-tenths of one percent (0.3%) of that proportion of the par value of its outstanding capital stock that the value of its real and personal property in Arkansas bears to the total value of the real and personal property of the corporation.

(B) No corporation shall pay an annual tax of less than one hundred fifty dollars (\$150);

(7) Each corporation actually and actively in the process of liquidation and which does not rent or lease its property but which retains its corporate charter or authority for the sole purpose of winding up its affairs shall pay an annual tax as provided in subdivision (6) of this section or an amount equivalent to three-tenths of one percent (0.3%) of the value of its real and tangible personal property in Arkansas, whichever is smaller, but in no instance shall the tax be less than one hundred fifty dollars (\$150); and

(8) An organization formed pursuant to the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., shall pay the minimum franchise tax.

History. Acts 1979, No. 889, § 3; 1983, No. 863, § 1; A.S.A. 1947, § 84-1835; Acts 1987 (1st Ex. Sess.), No. 29, § 1; 1993, No. 1285, §§ 3, 4; 1997, No. 479, § 9; 1997, No. 1104, § 3; 2003 (2nd Ex. Sess.), No. 94, § 1.

Amendments. The 2003 (2nd Ex. Sess.) amendment deleted former (b) and made related changes; in (1) and (2), substituted “three hundred dollars (\$300)” for “one hundred dollars (\$100)” and “four hundred dollars (\$400)” for “two hundred dollars (\$200)”; substituted “three hundred dollars (\$300)” for “one hundred dollars (\$100)” in (3), (4), and (5); in (4) and (6), in the first sentence, substituted “three-tenths of one percent (0.3%)” for “twenty-seven one-hundredths of one percent (0.27%)”; deleted “nor more than one million seventy-five thousand dollars (\$1,075,000)” following “(300)” in (4); sub-

stituted “one hundred fifty dollars (\$150)” for “fifty dollars (\$50.00) nor more than one million seventy-five thousand dollars (\$1,075,000)” in (6) and (7); and substituted “three-tenths of one percent (0.3%)” for “twenty-seven one-hundredths of one percent (0.27%)” in (7).

Effective Dates. Acts 1987 (1st Ex. Sess.), No. 29, § 3, provided that the increased rates provided in this act shall be effective for annual tax reports due on and after January 1, 1988.

Acts 2003 (2nd Ex. Sess.), No. 94, § 2, provided:

“The increased rate of franchise tax provided in Section 1 of this act shall be effective for calendar years beginning January 1, 2004. Taxes due for calendar years prior to 2004 shall remain due and payable at the rates in existence prior to the effective date of this act.”

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Corporations, 10 U. Ark. Little Rock L.J. 549.

CASE NOTES

ANALYSIS

In General.
Purpose.
Applicability.
Doing Business.
Failure to Comply.
Valuation.

In General.

Tax on franchise of corporations is valid, as it is a tax on the privilege or right granted by the state to a corporation to do business in the state and is not an asset of the corporation whose value can be ascertained for the purpose of taxation as property. *Saint Louis S.W. Ry. v. State ex rel. Norwood*, 106 Ark. 321, 152 S.W. 110 (1913), *aff'd*, 235 U.S. 350, 35 S. Ct. 99, 59 L. Ed. 265 (1914) (decision under prior law).

Purpose.

Intention of former statute was to impose franchise tax on all "live" corporations, whether actively engaged in business or not. *Arkansas Anthracite Coal Co. v. State*, 149 Ark. 28, 231 S.W. 184 (1921) (decision under prior law).

Applicability.

Former statute applied to all active corporations; that is, those corporations which were functioning, and not those corporations which were dormant. *Arkansas Anthracite Coal Co. v. State*, 149 Ark. 28, 231 S.W. 184 (1921) (decision under prior law).

Domestic corporations owning coal lands that they have leased to others were liable for tax, though they transacted no other active business in the state. *Arkansas Anthracite Coal Co. v. State*, 149 Ark. 28, 231 S.W. 184 (1921) (decision under prior law).

A domestic corporation whose business consisted merely in soliciting and receiving applications for membership, issuing policies to members, and collecting assessments for the purpose of paying the policies, in addition to paying the salaries of its officers, was not doing business for profit and not subject to tax. *State ex rel. Attorney Gen. v. Bankers & Planters Mut. Ins. Ass'n*, 152 Ark. 182, 238 S.W. 17 (1922) (decision under prior law).

Doing Business.

A foreign corporation authorized to do business in the state could be required to pay franchise tax, though the corporation was not actually doing business in the state. *State ex rel. Applegate v. Chicago Land & Timber Co.*, 173 Ark. 234, 292 S.W. 98 (1927) (decision under prior law).

Corporation paying tax is authorized to do business during the entire year for which payment is made. *Arkansas Power & Light Co. v. State*, 175 Ark. 495, 299 S.W. 1028 (1927) (decision under prior law).

Domestic corporations doing business both within and outside the state held not required to pay tax to the state of Arkansas on income derived from sources outside of Arkansas. *Cheney v. Stephens, Inc.*, 231 Ark. 541, 330 S.W.2d 949 (1960) (decision under prior law).

Failure to Comply.

Although corporation had failed to file a report and pay the franchise tax, it could bring an action on its own account, so long as the Attorney General had not proceeded to annul its charter. *Jones v. Bank of Commerce*, 131 Ark. 362, 199 S.W. 103 (1917) (decision under prior law).

The only effect of a certificate of the Governor declaring a foreign corporation to have forfeited its right to do business in the state by failure to pay its franchise tax was to withdraw from the foreign corporation authority to transact business in this state, but not to prevent its being sued in this state. *Mushrush v. Downing*, 181 Ark. 85, 24 S.W.2d 972 (1930) (decision under prior law).

Valuation.

Since Acts 1911, No. 112, § 6, limited the tax on foreign corporations to that portion of its capital represented by its property and business in this state, former statute prescribing the value of no par value stock for tax purposes did not impose tax on property of foreign corporation outside of state. *State ex rel. Att'y Gen. v. Margay Oil Corp.*, 167 Ark. 614, 269 S.W. 63 (1925); *Margay Oil Corp. v. Applegate*, 169 Ark. 96, 272 S.W. 845 (1925), *aff'd*, 273 U.S. 666, 47 S. Ct. 458, 71 L. Ed. 830 (1927) (decisions under prior law).

It is immaterial whether the property of a corporation is of the value of its capital stock. *State ex rel. Applegate v. Chicago Land & Timber Co.*, 173 Ark. 234, 292 S.W. 98 (1927) (decision under prior law).

State was without authority to charge a corporation franchise tax on its capital stock as represented by property owned

and business transacted in the state, but only had authority to charge on the capital stock as represented by property owned and used in business transacted in the state. *Koonce v. Pierce Petroleum Corp.*, 176 Ark. 187, 3 S.W.2d 9 (1928) (decision under prior law).

26-54-105. Franchise tax reports.

(a)(1) The Secretary of State shall furnish report forms to each corporation subject to the provisions of this chapter by mailing them to the corporation's current agent for service or other person identified by the corporation.

(2) When filing the franchise tax report, a corporation may state who is to receive a franchise tax form the following year if that person is different from the agent for service on file for the corporation at that time.

(b) Any corporation that fails to receive the report forms by March 20 of the reporting year shall make written request for them to the Secretary of State on or before March 31.

(c)(1) Each corporation subject to the requirements of this chapter shall file a franchise tax report with the Secretary of State which shows its condition and status as of the close of business on December 31 of the preceding calendar year and other information required by the Secretary of State.

(2)(A) The franchise tax as computed on the report shall be remitted with the franchise tax report on or before June 1 of the reporting year for franchise tax due for calendar year 2003 and years prior to 2003.

(B) The franchise tax as computed on the report shall be remitted with the franchise tax report on or before May 1 of the reporting year for franchise tax due for calendar year 2004 and subsequent years.

(d)(1) Every corporation that dissolves shall be required to pay at the time of dissolution the franchise tax for the prior calendar year and pay at the time of dissolution the minimum franchise tax for the year in which dissolved or withdrawn.

(2) Any newly formed corporation shall not be required to file a franchise tax report until the calendar year immediately following the calendar year of incorporation.

(e)(1) When the par value of the shares of a corporation is required to be stated in any franchise tax report and the shares of the corporation are without par value, the number of shares shall be stated.

(2) For the purpose of computing the franchise tax prescribed by this chapter, such shares of no par value shall be considered to be of the par value of twenty-five dollars (\$25.00) per share.

(f) Each corporation which pays its tax computed by the full assessment of capital stock or property shall not be required to report the value of its real and personal property within or without this state.

(g)(1) Every franchise tax report shall contain the following statement:

"I declare, under the penalties of perjury, that the foregoing statements are true to the best of my knowledge and belief."

(2) The statement shall be signed by the president, vice president, secretary, treasurer, or controller of the corporation or other authorized person.

(h)(1) All information contained in a franchise tax report shall be confidential and not available for public inspection, except for the following:

(A) The name and address of the corporation;

(B) The name of the corporation's president, vice president, secretary, treasurer, and controller;

(C) The total authorized capital stock with par value;

(D) The total issued and outstanding capital stock with par value; and

(E) The state of incorporation.

(2) In the case of a franchise tax report filed by an organization formed under the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., the names of members, except those designated in the organizations' franchise tax report as a manager, president, vice president, secretary, treasurer, or controller of the organization, shall be confidential and not available for public inspection unless the organization has no registered agent for service of process.

History. Acts 1979, No. 889, § 4; A.S.A. 1947, § 84-1836; Acts 1987, No. 19, § 2; 1989, No. 502, § 1; 1991, No. 1046, § 1; 1991, No. 1140, § 1; 1995, No. 772, § 1; 1999, No. 1056, § 1; 1999, No. 1598, § 2; 2003 (2nd Ex. Sess.), No. 94, § 3; 2005, No. 883, § 1; 2007, No. 865, § 2.

Amendments. The 2003 (2nd Ex. Sess.) amendment substituted "of the preceding calendar year" for "last preceding" in (c)(1); added (c)(2)(B); and added "for

franchise tax due for calendar year 2003 and years prior to 2003" to the end of (c)(2)(A).

The 2005 amendment, in (g)(2), substituted "The statement" for "This statement" and added "or other authorized person" and made a related change.

The 2007 amendment redesignated former (h) as present (h)(1) and redesignated the remaining subsections accordingly; and added (h)(2).

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Corporations, 10 U. Ark. Little Rock L.J. 549.

CASE NOTES

Constitutionality.

Statutory valuation of no-par corporate stock at \$25.00 per share for franchise tax purposes did not violate constitutional

guarantee of due process of law. *Gulf Oil Corp. v. Heath*, 255 Ark. 604, 501 S.W.2d 787 (1973) (decision under prior law).

26-54-106. [Repealed.]

Publisher's Notes. This section, concerning failure to furnish information, was repealed by Acts 1999, No. 673, § 1. The section was derived from Acts 1979,

No. 889, § 5; A.S.A. 1947, § 84-1837; Acts 1991, No. 1046, § 2; 1991, No. 1140, § 2; 1993, No. 1178, § 1.

26-54-107. Computation of tax — Penalty — Relief.

(a) The Secretary of State from the information reported and from any other information received by him or her bearing upon the subject shall compute the amount of tax of each corporation at the rate or rates provided by this chapter.

(b)(1)(A) If the taxpayer fails to comply with the filing and remittance requirements prescribed in § 26-54-105(c) by June 1, the Secretary of State shall assess the corporation a penalty of twenty-five dollars (\$25.00) plus interest on the tax and penalty from the date due until paid at the rate of ten percent (10%) per annum.

(B) However, the franchise tax, penalty, and interest for any tax year shall not exceed two (2) times the corporation's tax owed.

(2) On or before November 1 of each year, the Secretary of State shall mail notice to the corporation at its last known address stating that the corporation is subject to forfeiture of its corporate charter under § 26-54-111 for the failure to pay corporate franchise tax.

(c)(1) A corporation may seek relief from any proposed assessment of taxes pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) This method shall be the exclusive method for seeking relief.

History. Acts 1979, No. 889, § 6; A.S.A. 1947, § 84-1838; Acts 1987, No. 19, § 3; 1991, No. 1046, § 3; 1991, No. 1140, § 3; 1999, No. 1037, § 1.

CASE NOTES**Amended Articles.**

Former statute providing for computation of franchise tax and for a penalty for failure to pay such tax did not require that amended articles of foreign corporations be filed with the secretary of state before their validity was recognized for the com-

putation of the tax and, accordingly, a foreign corporation that validly amended its articles to increase the par value of its stock was entitled to recognition of the amended articles. *Franklin Elec. Co. v. Heath*, 261 Ark. 269, 547 S.W.2d 755 (1977).

26-54-108. Taxes and penalties as lien.

The taxes and penalties required to be paid by this chapter shall be a first lien on all property of the corporation, whether or not the property is employed by the corporation in the prosecution of its business or is in the hands of an assignee, receiver, or trustee.

History. Acts 1979, No. 889, § 7; A.S.A. 1947, § 84-1839.

26-54-109. Lists of corporations to be prepared.

(a)(1) The Bank Commissioner, Insurance Commissioner, and any other officer or agency of the state authorized to issue corporate permits or authorities to do business in this state shall prepare and maintain a correct list of all corporations organizing or qualifying through their respective offices or agencies.

(2) Each official or agency shall file with the Secretary of State a monthly report showing:

(A) The name and address of each new corporation organized or qualified;

(B) The authorized and outstanding capital stock;

(C) The name changes, mergers, charter forfeitures, dissolutions, or withdrawals; and

(D) All other information concerning the corporation required by the Secretary of State.

(b) Upon request of the Secretary of State, each official or agency shall prepare and certify to the Secretary of State a complete list of the names and addresses of all corporations which have organized or qualified through their respective office or agency and which are subject to the provisions of this chapter.

(c) Officials or agencies of the state, county, or municipalities authorized to issue permits shall notify each corporation receiving a permit of the requirements to register the corporation with the Secretary of State prior to conducting business in Arkansas.

(d) Any corporation filing instruments providing for the organization of any common law or statutory trust or similar organization with any county clerk, or other clerk of the various counties of this state, shall file them in duplicate. The clerk receiving the documents for filing or recordation shall file mark them and forward the file-marked duplicate to the Secretary of State.

(e) The Director of the Department of Finance and Administration shall provide the Secretary of State a list of corporations doing business in this state and filing tax reports with the Department of Finance and Administration. However, the director shall not include any information deemed confidential by any other law.

History. Acts 1979, No. 889, § 8; A.S.A. 1947, § 84-1840; Acts 1987, No. 19, § 4.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Corporations, 10 U. Ark. Little Rock L.J. 549.

26-54-110. Dissolution or withdrawal by corporations.

Applications for dissolution or withdrawal by a corporation, association, or organization cannot be accepted by the authority which initially authorized or granted an authority to the corporation to do business in Arkansas until receipt of a statement verified by the Secretary of State that the franchise tax due has been paid.

History. Acts 1979, No. 889, § 9; A.S.A. 1947, § 84-1841; Acts 1987, No. 19, § 5.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Corporations, 10 U. Ark. Little Rock L.J. 549.

CASE NOTES

Forfeit of Charter.

Section 4-27-1420, this section and § 26-54-112 presuppose that a corporation whose charter has been forfeited has not yet been dissolved, and since a corpo-

ration with a forfeited charter has not been dissolved, the corporation continues to exist for limited purposes. *Gibson v. Dennis* (In re Russell), 123 B.R. 48 (Bankr. W.D. Ark. 1990).

26-54-111. Charter forfeiture for failure to pay tax — Procedure.

(a) On or before January 1 of each year, the Secretary of State shall issue a proclamation proclaiming as forfeited the corporate charters or authorities, as the case may be, of all corporations, both domestic and foreign which, according to the Secretary of State's records, are delinquent in the payment of the annual franchise tax for any prior year.

(b) A copy of the proclamation, or applicable portion thereof, shall be furnished to each other official or agency of the state which is authorized to issue corporation charters or authorities. Upon their receipt of the proclamation, the several officials shall at once correct their respective records in accordance with the proclamation.

History. Acts 1979, No. 889, § 10; 1842; Acts 1987, No. 19, § 6; 1991, No. 1983, No. 828, § 1; A.S.A. 1947, § 84-1046, § 4; 1991, No. 1140, § 4.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Corporations, 10 U. Ark. Little Rock L.J. 549.

CASE NOTES

ANALYSIS

In General.

Officers and Directors.

In General.

It is within the power of the state legis-

lature to declare that a corporation delinquent in payment of franchise taxes shall ipso facto cease to exist. *Gibson v. Dennis* (In re Russell), 123 B.R. 48 (Bankr. W.D. Ark. 1990).

Officers and Directors.

Officers and directors of a corporation who actively participate in its operation during the time when the corporate charter is revoked for failure to pay corporate franchise taxes are individually liable for

debts incurred during the period of revocation. *Larzelere v. Reed*, 35 Ark. App. 174, 816 S.W.2d 614 (1991).

Cited: *Mullenax v. Edwards Sheet Metal Works, Inc.*, 279 Ark. 247, 650 S.W.2d 582 (1983).

26-54-112. Reinstatement of corporations.

(a)(1)(A)(i) Any corporation whose charter or permit authority to do business in the state has been declared forfeited by proclamation of the Governor or the Secretary of State may be reinstated to all its rights, powers, and property.

(ii) Reinstatement shall be retroactive to the time that the corporation's authority to do business in the state was declared forfeited.

(B) The reinstatement shall be made after the filing of all delinquent franchise tax reports satisfactory to the Secretary of State and the payment of all taxes and penalties due for each year of delinquency.

(2) However, no reinstatement shall be allowed after seven (7) years from the date the charter or permit authority to do business in the state was declared forfeited by proclamation of the Governor or the Secretary of State.

(b) If the Secretary of State issued the original corporate charter, permit, or authority, the Secretary of State shall reinstate the corporation upon payment by the corporation of all amounts due, as provided in subsection (a) of this section.

(c)(1) If the original corporate charter, permit, or authority was issued by an official other than the Secretary of State, the official shall reinstate the corporation upon the corporation's filing with the official the receipt of the Secretary of State showing payment of all amounts due, as provided in subsection (a) of this section.

(2) Thereafter, the corporation shall stand in all respects as though its name had never been declared forfeited.

History. Acts 1979, No 889, § 11; § 7; 1991, No. 1046, § 5; 1991, No. 1140, A.S.A. 1947, § 84-1843; Acts 1987, No. 19, § 5; 1999, No. 522, § 1.

RESEARCH REFERENCES

Ark. L. Notes. Flaccus, A Grab Bag of Recent Arkansas Cases, 1999 Ark. L. Notes 25.

U. Ark. Little Rock L.J. Survey — Corporations, 10 U. Ark. Little Rock L.J. 549.

CASE NOTES

ANALYSIS

In General.
Corporate Status.

In General.

Sections 4-27-1420, 26-54-110 and this

section presuppose that a corporation whose charter has been forfeited has not yet been dissolved, and since a corporation with a forfeited charter has not been dissolved, the corporation continues to exist for limited purposes. *Gibson v. Dennis* (In

re Russell), 123 B.R. 48 (Bankr. W.D. Ark. 1990).

Corporate Status.

Where company's charter was revoked on February 1, 1959, for nonpayment of taxes and the charter was restored upon payment of all delinquent taxes on December 19, 1960, payment of taxes did not restore company to its corporate status at time it first became delinquent, but only restored it to that status as of December 19, 1960, the time of payment of the taxes. *Moore v. Rommel*, 233 Ark. 989, 350 S.W.2d 190 (1961) (decision under prior law).

The reinstatement of the appellant's corporate status did not retroactively restore the corporation as of the date of its revocation. *Tribco Mfg. Co. v. People's Bank of Imboden*, 67 Ark. App. 268, 998 S.W.2d 756 (1999).

Following the revocation of its corporate charter, a corporation loses its capacity to sue and any lawsuit filed during this status must be dismissed, and the subsequent reinstatement of the corporate sta-

tus does not retroactively restore or otherwise vest the corporation with a continuous existence. *Terry v. Rice* (In re Chequet Sys.), 246 B.R. 873 (Bankr. E.D. Ark. 2000).

Trial court did not err in denying appellant's motion to dismiss for lack of standing on the ground that appellee's Louisiana corporate charter had been revoked at the time it filed its original complaint against appellant for unlawfully detaining property where under both Arkansas and Louisiana law, reinstatement of a corporate charter was retroactive to the date of its revocation. *Omni Holding & Dev. Corp. v. C.A.G. Invs., Inc.*, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 353 (June 7, 2007).

Pursuant to this section, the restoration of a corporation's corporate status vests it with continuous existence as though the revocation of its charter never occurred. *Omni Holding & Dev. Corp. v. C.A.G. Invs., Inc.*, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 353 (June 7, 2007).

Cited: *Carter v. Four Seasons Funding Corp.*, 351 Ark. 637, 97 S.W.3d 387 (2003).

26-54-113. Disposition of funds.

(a) All taxes and penalties collected under the provisions of this chapter each month shall be deposited into the State Treasury to the credit of the Revenue Holding Fund Account of the State Apportionment Fund.

(b)(1) On or before the fifth day of the following month, the Treasurer of State shall allocate and transfer the taxes and penalties collected to the General Revenue Fund Account of the State Apportionment Fund until a total of eight million dollars (\$8,000,000) has been transferred during a fiscal year.

(2) After the transfers required by subdivision (b)(1) of this section have been made, the taxes and penalties collected under this chapter during the remainder of the fiscal year shall be special revenues, and the Treasurer of State shall transfer the taxes and penalties collected to the Educational Adequacy Fund after making the deductions required by § 19-5-203(b)(2).

History. Acts 1979, No. 889, § 12; A.S.A. 1947, § 84-1844; Acts 2003 (2nd Ex. Sess.), No. 94, § 4.

Amendments. The 2003 (2nd Ex. Sess.) amendment, in (a), inserted "each month," deleted "general revenues and

shall be" preceding "deposited," and inserted "Revenue Holding Fund Account of the"; added (b)(2); and rewrote (b)(1).

Effective Dates. Acts 2003 (2nd Ex. Sess.), No. 94, § 4: amendment effective by its own terms on July 1, 2004.

26-54-114. Nonpayment of franchise taxes.

(a) No corporation or limited liability company shall be allowed to file any forms or documentation related to that corporation or limited liability company if the corporation or limited liability company owes past-due franchise taxes to the Secretary of State.

(b) No person shall be allowed to file any initial forms or documentation with the Secretary of State to create any legal entity in the State of Arkansas or to obtain authority to do business in the State of Arkansas if that person is substantially connected to any corporation or limited liability company that owes past-due franchise taxes to the Secretary of State.

(c) As used in this section:

(1) "Past-due franchise taxes" means only those taxes owed three (3) years prior to the year in which the current filing is presented;

(2) "Past officer or director" means a person who was associated with the corporation or limited liability company during the time that its charter was revoked for nonpayment of franchise taxes; and

(3) "Substantially connected" means a present officer or director or a past officer or director of a corporation.

History. Acts 2001, No. 1549, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of ssembly, Tax Law, 24 U. Ark. Little Rock L.
Legislation, 2001 Arkansas General As- Rev. 613.

CHAPTER 55

MOTOR FUELS TAXES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. MOTOR FUEL TAX LAW.
3. REFUNDS — MOTOR FUELS USED FOR AGRICULTURAL PURPOSES. [REPEALED.]
4. REFUNDS — MOTOR FUELS USED IN MOTOR BUSES.
5. INTERSTATE MOTOR FUELS DEALERS. [REPEALED.]
6. SHIPMENTS OF MOTOR FUELS.
7. FUEL IMPORTED IN SUPPLY TANKS.
8. UNLICENSED OUT-OF-STATE TRUCKS.
9. VEHICLE TANK INSPECTIONS.
10. ADDITIONAL TAXES AND FEES.
11. INTERNATIONAL FUEL TAX AGREEMENT.
12. ADDITIONAL TAXES ON MOTOR FUEL, DISTILLATE SPECIAL FUELS, AND LIQUEFIED GAS SPECIAL FUELS.
13. REFUNDS — MOTOR FUELS USED BY FIRE DEPARTMENTS.

RESEARCH REFERENCES

Am. Jur. 72 Am. Jur. 2d, State Tax.,
§ 616 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

26-55-101. Exemption for United States Government vehicles — Refunds.

SECTION.

26-55-102. City motor bus system operating across state lines.

Effective Dates. Acts 1929, No. 65, § 75: approved Feb. 28, 1929. Emergency clause provided: "It is ascertained and hereby declared that the defective condition of the public roads is a standing menace to the traveling public; that the repairs of the present public roads, and the construction of the roads contemplated by this Act, are necessary for the safety of the traveling public, so that the immediate operation of the Act is essential for the protection of the public safety, and an emergency is therefore declared; and this Act shall take effect and be in force from and after its passage."

Acts 1935, No. 185, § 2: Mar. 26, 1935. Emergency clause provided: "It is hereby ascertained, that motor bus systems are now operating in adjoining cities and towns without adequate provision under existing laws for the collection of the motor vehicle fuel tax or for such cities and towns being reimbursed for the use of and damage to their streets, and that such fact constitutes an emergency, and it is or-

dered that this act take effect upon its approval."

Acts 1993, No. 1029, § 11: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that current laws do not require explicit monthly reports from terminals or pipeline companies regarding their activities relative to gasoline and diesel transactions and as a consequence the State may be experiencing a loss of fuel tax revenues since certain of such transactions may result in the evasion of such taxes; that such tax revenues are greatly needed by the State for highway, road, and street purposes; and that only by the effectiveness of the amendments contained in this act as expeditiously as possible may the aforementioned problems be solved. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1993."

26-55-101. Exemption for United States Government vehicles — Refunds.

(a) Motor vehicles belonging to the United States Government and used in its business exclusively shall not be required to pay any motor vehicle fuel tax.

(b) When motor vehicle fuel upon which the tax has been paid is sold to any agent or employee of the United States Government for use in a motor vehicle belonging to the United States Government, and is used in its business exclusively, the wholesaler or dealer may not charge the consumer with the amount of the tax but may claim the refund of the tax under such regulations as the Director of the Department of Finance and Administration may prescribe.

History. Acts 1929, No. 65, § 35; Pope's Dig., § 6635; A.S.A. 1947, § 75-248.

26-55-102. City motor bus system operating across state lines.

(a) The fee to be paid to this state for the registration and licensing of any motor bus used by a system of motor buses operating in lieu of a street car system in adjoining cities or incorporated towns which are separated by a state line shall not exceed the fee provided by law in the adjoining state for such bus when:

(1) More than one-half (½) of the mileage of the routes regularly run by the motor bus system is outside this state;

(2) More than one-half (½) of the gross revenues of such a system is derived from its operation outside this state and from the carrying of passengers from outside this state into this state;

(3) Such system is operated in this state under a franchise contract with the Arkansas city or town;

(4) The motor buses are not operated under any conditions whatever on any of the roads or highways in this state outside the corporate limits of such city or town; and

(5) The motor bus system shall pay to this state a motor vehicle fuel tax at the applicable rate as fixed by the law of this state upon at least one-half (½) of the motor vehicle fuel used in the operation of the system as a whole.

(b) At any time the adjoining city or town in Arkansas by ordinances may provide a privilege tax on the buses sufficient to reimburse such city or town for the use of its streets, and that tax may be greater in amount than authorized in Crawford and Moses' Digest, § 7444 [repealed].

History. Acts 1935, No. 185, § 1; Pope's Dig., § 6881; A.S.A. 1947, § 75-1132.

A.C.R.C. Notes. Crawford and Moses' Digest, § 7444, referred to in subsection (b) of this section, concerned a motor ve-

hicle privilege tax in cities and towns. The section was subsequently compiled at Ark. Stat. Ann. § 19-3506. Ark. Stat. Ann. § 19-3506 and later repealed by Acts 1957, No. 182, § 8.

SUBCHAPTER 2 — MOTOR FUEL TAX LAW

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Effective Dates. Acts 1941, No. 383, § 32: July 1, 1941.

Acts 1943, No. 250, § 2: approved Mar. 18, 1943. Emergency clause provided: "Whereas gasoline and other petroleum products classified as motor fuel, and especially aviation gasoline, are vitally essential in the present war emergency, and the rapid sale and movement of such products in commerce will be impeded if the distributors thereof are not promptly licensed and qualified as such under our State tax collection procedure and the regulations promulgated under our gasoline tax statutes, it is hereby declared that an emergency exists and this act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage."

Acts 1943, No. 251, § 2: approved Mar. 18, 1943. Emergency clause provided: "Whereas gasoline and other petroleum products classified as motor fuel, and especially aviation gasoline, are vitally essential in the present war emergency, and the rapid sale and movement of such products in commerce will be impeded if the distributors thereof are not promptly licensed and qualified as such under our State tax collection procedure and the regulations promulgated under our gasoline tax statutes, it is hereby declared that an emergency exists and this act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage."

Acts 1943, No. 252, § 2: approved Mar. 18, 1943. Emergency clause provided: "It

is found to be a fact that by amending Act 383 of 1941, as herein set out, the amount of motor fuel taxes collected will be greatly increased, and such taxes being essential to the payment of the State's highway obligations, and the payment of same being necessary to the peace, health, safety and welfare of the State and its citizens, an emergency is declared to exist by reason thereof and this act shall take effect and be in force immediately upon its enactment."

Acts 1943, No. 253, § 3: approved Mar. 18, 1943. Emergency clause provided: "It is found to be a fact that by amending Act 383 of 1941, as herein set out, the amount of motor fuel taxes collected will be greatly increased, and such taxes being essential to the payment of the State's highway obligations, and the payment of same being necessary to the peace, health, safety and welfare of the State and its citizens, an emergency is declared to exist by reason thereof and this act shall take effect and be in force immediately upon its enactment."

Acts 1943, No. 255, § 2: approved Mar. 18, 1943. Emergency clause provided: "Whereas gasoline and other petroleum products classified as motor fuel, and especially aviation gasoline, are vitally essential in the present war emergency, and the rapid sale and movement of such products in commerce will be impeded if the distributors thereof are not promptly licensed and qualified as such under our State tax collection procedure and the regulations promulgated under our gasoline tax statutes, it is hereby declared that an emergency exists and this act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage."

Acts 1945, No. 166, § 2: approved Mar. 2, 1945. Emergency clause provided: "Whereas gasoline and other petroleum products classified as motor fuel, and especially aviation gasoline, are vitally essential in the present war emergency, and the rapid sale and movement of such products in commerce will be impeded if the distributors thereof are not promptly licensed and qualified as such under our State tax collection procedure and the regulations promulgated under our gasoline tax statutes, it is hereby declared that an emergency exists and this Act, being

necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage."

Acts 1947, No. 415, § 3: Mar. 28, 1947. Emergency clause provided: "Whereas, it is ascertained that the exportation of motor fuel is necessary for the preservation of public peace, health, safety and welfare of the people of this state and that present laws do not provide therefor. Therefore, an emergency is hereby declared to exist and this law shall be in full force and effect from and after its passage and approval."

Acts 1949, No. 352, § 2: approved Mar. 21, 1949. Emergency clause provided: "This Act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage."

Acts 1953, No. 143, § 3: Feb. 25, 1953. Emergency clause provided: "It has been found and is declared by the General Assembly that large numbers of oil companies and operators of filling stations selling gasoline in states adjoining the Arkansas borders and that they have leased many tracts of land in Arkansas for a distance of 300 feet from the Arkansas state boundary lines and that such practice is causing the loss of revenue to this state and that the adoption of this Act will prohibit said practice and increase the revenue of this State. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from the date of its passage and approval."

Acts 1957, No. 312, § 4: approved Mar. 27, 1957. Emergency clause provided: "It has been found and declared by the General Assembly that in some instances bridges have been abandoned, redesigned, relocated or otherwise changed so as to eliminate from border zones areas previously within such zones beyond the required distance from new bridges or bridges as redesigned, relocated or otherwise changed, thereby destroying long existing rights of the owners or lessees of such areas and the diminution of such areas is also causing the loss of substantial revenues to this State due to the inability of filling station operators within said zones to compete favorably with filling station operators in states adjoining

the Arkansas borders, and the adoption of this Act will prohibit the loss of such revenues and will actually increase the revenue of this State. Therefore, an emergency is declared to exist and this Act being necessary for the public peace, health and safety shall take effect and be in force from the date of its passage."

Acts 1957, No. 393, § 5: Mar. 27, 1957. Emergency clause provided: "It has been found and declared by the General Assembly that the bond heretofore required to be posted by distributors of motor fuel to assure the payment of state taxes upon such fuel have in many instances been sufficient to insure the State of Arkansas against the loss of revenues, that the penalties heretofore prescribed by law for failure of distributors to pay the taxes upon motor fuel within the prescribed time were excessive and therefore almost unenforceable, and that this Act will provide for an increase in the bond and a decrease in the penalties provided for failure to pay the tax on or before the due date and will thereby render the motor fuel tax laws of this State more enforceable. Therefore an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, safety and welfare shall be in full force and effect from and after its passage and approval."

Acts 1959, No. 273, § 2: Mar. 25, 1959. Emergency clause provided: "It is hereby found and determined by the General Assembly that severe weather conditions have caused serious damage to the public highways of this State; that adequate funds are not available and will not be available under the existing laws of this State to provide for adequate maintenance and reconstruction of such highways to make the same safe and suitable for the public use; and that only by the immediate passage of this Act may additional funds be provided whereby such situation may be corrected. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1965 (1st Ex. Sess.), No 41, § 16: June 10, 1965. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that many of the highways, roads and streets

in the State are in a dangerous condition and in need of reconstruction and that there is an immediate need for the construction of new highways, roads and streets, in order to alleviate existing hazards detrimental to the public health, safety and welfare; that the State and the various counties and municipalities do not have funds sufficient in amount to undertake and complete the necessary construction and reconstruction work, which should be commenced and completed as soon as practicable; that only by this act can the necessary construction and reconstruction work be promptly commenced and completed; and for said reasons it is hereby declared necessary for the preservation of the public peace, health and safety that this act become effective without delay. It is, therefore, declared that an emergency exists and this act shall take effect and be in force from and after the date of its passage and approval."

Acts 1965 (1st Ex. Sess.), No. 43, §§ 3, 5: July 1, 1965. Emergency clause provided: "It is hereby found and declared that by providing for an adequate bond of distributors that there will be an increase in collection of highway user taxes, and that by providing that the Motor Fuel Tax be paid by the first receiver, there will be a substantial increase in the collection of highway user taxes. Therefore, an emergency is hereby found and declared to exist, and the Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval." Approved June 10, 1965.

Acts 1967, No. 45, § 2: Feb. 7, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that a great inequity exists under the present law relative to the border tax rate on motor fuel in certain cities of this State, in that service stations that were within the limits of a city or town on or before June 1, 1965, are entitled to charge and remit the border tax rate, while other nearby competing stations which are in an area made a part of the city or town since June 1, 1965, are required to collect and pay a higher rate of tax on motor fuel sold, and that this Act is immediately necessary to correct this situation and to provide a healthy competitive market in such cities and towns. Therefore, an emergency is hereby declared to exist and this Act

being necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

Acts 1967, No. 198, §§ 3, 5: July 1, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing law relative to the liability of licensed distributors for motor fuel taxes on motor fuel is difficult to interpret and therefore creates confusion and uncertainty as to the tax liability of licensed distributors in this State, and that this Act is immediately necessary to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval." Approved Mar. 6, 1967.

Acts 1971, No. 295, § 4: Mar. 15, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present law relating to the bond required to be deposited by licensed motor fuel distributors there is no specific limitation on the amount of the bond which the Commissioner of Revenues may require such distributor to post; that said law makes no distinction between licensed motor fuel distributors that are organized under the laws of the State of Arkansas and wholly owned by Arkansas residents, and non-resident distributors; that the bond required by the Commissioner of Revenues in the case of some resident distributors is extremely high and places an unreasonable burden on the distributor; that the purpose for requiring the deposit of a bond is to assure that the distributor will remit to the State all motor fuel taxes due the state; that since resident motor fuel distributors have property within the State which may be attached by the State for taxes in case the distributor fails to remit all taxes due, the bond required to be posted by resident distributors need not be in an amount equal to the total taxes to be remitted to the State by the distributor but that a maximum bond of fifty thousand dollars (\$50,000.00) is adequate to protect the State in the collection of motor fuel taxes; and that this Act is immediately necessary to prescribe a maximum bond for resident motor fuel distributors. Therefore, an emergency is hereby declared to

exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 445, § 26: July 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that immediate steps must be taken to provide additional State funds, and to allocate federal revenue sharing funds, for the construction of State highways which are essential to the public health, safety, and welfare and that the immediate passage of this Act is necessary in order that fiscal officials of the State may make plans to prepare for the collection of additional highway revenues effective from and after July 1, 1973. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1973."

Acts 1973, No. 507, § 3: Mar. 29, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that a great inequity exists under the present law relative to the border tax rate on motor fuel in certain cities of this State in that service stations that were within the limits of a city or town on or before June 1, 1967, are entitled to charge and remit the border tax rate, while other nearby competing stations which are in an area made a part of the city or town since June 1, 1967, are required to collect and pay a higher rate of tax on motor fuel sold, and that this Act is immediately necessary to correct this situation and to provide proper competitive markets in such cities or towns. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 437, § 8: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing highway user revenue sources do not provide for the adequate maintenance, repair, construction and reconstruction of state highways, county roads and city streets; that the motor vehicular traffic on the public highways and streets of this State makes it

immediately necessary that additional funds be provided in order to finance adequate highway, road and street maintenance and construction programs; that the continued economic expansion and growth of this State will be jeopardized if an adequate system of public roads and streets is not provided; and that only by the immediate passage of this Act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July first of 1979."

Acts 1979, No. 686, § 4: Apr. 2, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly that the present evaporation and collection allowance rate for motor fuel distributors is insufficient to cover the cost of collection, and that the passage of this Act is necessary to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 802, §§ 3, 5: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that this Act is necessary to control the payments of motor fuel tax. Therefore, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after July 1, 1979."

Acts 1983, No. 830, § 5: Mar. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the orderly administration of the motor fuel tax laws is essential for the effective collection of these taxes; that some uncertainty exists regarding the sale of fuels to the United States and, that this Act is necessary to clarify this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 112, § 2: May 30, 1985. Emergency clause provided: "It is hereby

found and determined by the General Assembly that there is urgent need for additional funds to provide for construction, repair and maintenance of state highways; that the exemption of gasohol from motor fuel taxes and special motor fuel taxes may in the future result in a substantial amount of highway revenues since such laws provide for a total exemption from all motor fuel and special motor fuel taxes for motor fuels which contain only ten percent anhydrous ethanol and this exemption could well lead to more widespread use of this fuel; that it is the purpose of this Act to repeal such exemptions and to assure that persons using such fuels pay their fair share of the cost of constructing and maintaining highways in the state and that this Act should be given effect immediately to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 30, 1985."

Acts 1987, No. 763, § 8: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious danger of losing revenues which are necessary to provide adequate funding for essential needs of the citizens of this State and the provisions of this Act are necessary to avoid a substantial reduction in State revenues. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1987."

Acts 1989, No. 168, § 5: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that this act is necessary to secure the indebtedness to the state for motor fuel taxes; that this act should go into effect on July 1, 1989, in order to provide sufficient time to give notice to all persons involved; and that unless this emergency clause is adopted, the act may not go into effect on July 1, 1989. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1989."

Acts 1991, No. 688, § 10: Mar. 21, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that some taxpayers are not properly completing and timely filing tax returns; that these failures create an administrative burden upon the Department of Finance and Administration; and that this act is designed to impose a fifty dollar (\$50) penalty for failure to timely file returns, even if no tax is due, or if returns are not properly completed. Therefore, an emergency is hereby declared to exist and this act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1029, § 11: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that current laws do not require explicit monthly reports from terminals or pipeline companies regarding their activities relative to gasoline and diesel transactions and as a consequence the State may be experiencing a loss of fuel tax revenues since certain of such transactions may result in the evasion of such taxes; that such tax revenues are greatly needed by the State for highway, road, and street purposes; and that only by the effectiveness of the amendments contained in this act as expeditiously as possible may the aforementioned problems be solved. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1993."

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and

that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1035, § 2: July 1, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly that motor fuels are taxed in order to repair, maintain, and construct the roads in Arkansas. It is also found that automobiles used solely for racing do not use the roads in Arkansas; and therefore, those persons paying taxes on leaded gasoline or methanol for racing automobiles are being unfairly taxed. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001."

Acts 2001, No. 1498, § 2: Apr. 12, 2001. Emergency clause provided: "It is found and determined by the General Assembly that border territory included within the limits of a border city, incorporated town, or planned community after February 1, 1973 are unjustly being denied the border tax rate on motor fuels. This leads to confusion within a border city, incorporated town, or planned community as to which entities are subject to the border tax rate on motor fuels. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

CASE NOTES

Cited: *Snyder v. Martin*, 305 Ark. 128, 806 S.W.2d 358 (1991).

26-55-201. Title.

This subchapter and any amendments thereof and supplements thereto shall be known and may be cited as the "Motor Fuel Tax Law", and as so constituted is hereinafter referred to as "this subchapter".

History. Acts 1941, No. 383, § 1; A.S.A. 1947, § 75-1101.

CASE NOTES

Cited: Ragland v. Yeargan, 288 Ark. 81, 702 S.W.2d 23 (1986).

26-55-202. Definitions.

As used in this subchapter:

(1) "Bill of lading" means any serially numbered document which shall clearly indicate the following:

- (A) The seller's distributor license number;
- (B) The origin of the transport trip;
- (C) The approximate destination or destinations of the transport trip;
- (D) The type or types of motor fuel being transported and quantity or quantities of motor fuel to be delivered to each destination;
- (E) The person or persons responsible for the payment of the motor fuel tax; and

(F) Such other information or forms as the Director of the Department of Finance and Administration by regulation may adopt or require to implement the intent of this subchapter;

(2) "Dealer" means any person except a distributor engaged in the business of selling motor fuel in the State of Arkansas;

(3) "Distributor" means any person, including the State of Arkansas and any political subdivision of the state, but not including the United States or any of its instrumentalities except to the extent permitted by the United States Constitution or laws, that is customarily in the wholesale business offering for resale or delivery of motor fuel to dealers, consumers, or others in tanks of two hundred gallons (200 gals.) or more which are not connected to a motor vehicle and that is:

(A) Making the first sale in the State of Arkansas of any motor fuel, imported into the state from any other state, territory, or foreign country, after it shall have been received within this state within the meaning of this subchapter;

(B) Consuming or using in the State of Arkansas any motor fuel so imported and shall have purchased it before it shall have been received by any other person in this state, within the meaning of this subchapter; or

(C) Producing, refining, preparing, distilling, manufacturing, blending, or compounding motor fuel in this state;

(4) "Duly licensed distributor" means any distributor holding an unrevoked license issued by the director;

- (5) "Exporting" means taking motor fuel out of this state;
- (6) "Importing" means bringing motor fuel into this state;
- (7)(A) "Motor fuel" means all products commonly or commercially known or sold as gasoline regardless of their classification or uses.

(B) "Motor fuel" includes casinghead, absorption, and natural gasoline and condensate when used without blending as a motor fuel or sold for use in motors directly or sold to those who blend for their own use.

(C) However, "motor fuel" does not include:

(i) Casinghead, absorption, and natural gasoline and condensate when sold to be blended or compounded with other less volatile liquids in the manufacture of commercial gasoline for motor fuel;

(ii) Leaded gasoline with an octane rating one hundred ten (110) or higher used solely for off-highway testing;

(iii) Oil that is:

(a) Derived solely from plants or animals or any mixture of plants or animals;

(b) Free from any petroleum products; and

(c) Not chemically altered by distillation, transesterification, or other similar chemical process; or

(iv) Oil that is:

(a) Normally sold for cooking purposes and purchased from retail outlets; or

(b) Used cooking oil recycled and gathered from restaurants and commercial food processors;

(8) "Motor vehicle" means all vehicles, engines, machines, or mechanical contrivances which are propelled by internal combustion engines or motors and used for travel on public roads and highways;

(9) "Person" includes any individual, company, partnership, limited liability company, joint venture, joint agreement, mutual or other association, corporation, estate, trust, business trust, receiver or trustee appointed by any state, federal, or other court, syndicate, this state, any county, city, municipality, school district, or any other political subdivision of this state or group or combination acting as a unit, in the plural or singular number;

(10)(A) "Pipeline importer" means a distributor who imports motor fuel by common carrier pipeline, barge, or rail.

(B) A distributor who imports motor fuel exclusively by motor vehicle tank truck is not a pipeline importer;

(11) "Public highways" means every way or place of whatever nature, generally open to the use of the public as a matter of right, for the purposes of vehicular travel, and notwithstanding that it may be temporarily closed for the purpose of construction, reconstruction, maintenance, or repair;

(12) "Purchase" includes any acquisition of ownership;

(13) "Received" means:

(A) Motor fuel produced, refined, prepared, distilled, manufactured, blended, or compounded at any refinery at any place in the

State of Arkansas by any person shall be deemed to be received by such person when the motor fuel shall have been loaded at such refinery or other place into tank cars, ships, or barges, or when the motor fuel shall have been placed in any tank at or by such refinery from which any withdrawals are made direct into tank trucks, tank wagons, pipelines, or other types of transportation equipment, containers, or facilities other than tank cars, ships, or barges, or from which any sales or deliveries not involving transportation are made directly;

(B) Motor fuel imported into the State of Arkansas from any other state, territory, or foreign country by vessel and delivered in that vessel to any person, at a marine terminal in the State of Arkansas for storage, or so imported by pipeline and delivered to any person by such pipeline or a connecting pipeline at a pipeline terminal or pipeline tank farm in the State of Arkansas for storage, shall be deemed to have been received by such person when the motor fuel shall have been loaded into tank cars, ships, or barges at such marine or pipeline terminal or tank farm for any purpose, or when the motor fuel shall have been placed in any tank of less than one hundred thousand gallons (100,000 gals.) capacity thereat, or elsewhere by such person, or when the motor fuel shall have been placed in any tank thereat, or elsewhere by such person, from which any withdrawals are made direct into tank trucks, tank wagons, pipelines or other types of transportation equipment, containers, or facilities other than tank cars, ships, or barges or from which tank any sales or deliveries not involving transportation are made directly, but not before;

(C) Motor fuel purchased in a tank car which shall be unloaded in the State of Arkansas shall be deemed to be received at the time when and place where the tank car is unloaded, but not before;

(D)(i) Motor fuel imported by any person into this state from any other state, territory, or foreign country, other than by vessel for storage at marine terminals as set forth in this section, or by pipeline for storage at pipeline terminals or pipeline tank farms as hereinbefore set forth, or by tank car, shall be deemed to be received, in the case of motor fuel imported from a foreign country, at the time when and the place where the motor fuel shall be withdrawn from the original container in which the motor fuel was imported, but not before, and shall be deemed to be received in the case of motor fuel imported from another state or territory of the United States at the time when and the place where the interstate transportation of the motor fuel shall have been completed within this state, but not before.

(ii) However, nothing in this subdivision (13) shall be construed to allow the transportation of gasoline by any person without first having secured the proper and necessary permit for such transportation from the director; and

(E) Motor fuel purchased by one (1) licensed distributor from another licensed distributor shall be deemed to be received by the

distributor purchasing the motor fuel at the time title to such motor fuel passes;

(14) "Sale" includes any exchange, gift, or other disposition; and

(15) "Terminal" means every person in the business of withdrawing or removing motor fuel from any pipeline outlet in this state and then storing the motor fuel in any type of storage container.

History. Acts 1941, No. 383, § 2; 1943, No. 254, § 1; 1957, No. 352, § 1; 1967, No. 198, § 1; 1977, No. 346, § 3; A.S.A. 1947, § 75-1102; Acts 1987, No. 763, § 2; 1993, No. 1029, § 1; 1995, No. 1160, § 26; 2001, No. 1035, § 1; 2007, No. 690, § 1.

Publisher's Notes. Acts 1987, No. 763, § 1, provided that terms used in the act have the same meaning as in Acts 1941, No. 383 (§ 26-55-201 et seq.).

Acts 1987, No. 763, § 6, provided that nothing in the act shall change or modify the tax rates levied on "motor fuel" pursuant to any of the laws of this state, including, but not limited to, Acts 1941, No. 383, § 4 (§§ 26-55-205 and 26-55-207), Acts

1973, No. 445, § 1 (§§ 26-55-205 and 26-56-201), and Acts 1985, No. 456, § 1 (§§ 26-55-1002 and 26-56-502).

Acts 1993, No. 1029, § 7, provided: "The Director of the Department of Finance and Administration is hereby directed, with the advise and concurrence of the Director of Highways and Transportation, or his designee, to make and promulgate all rules and regulations deemed necessary or desirable by such Directors in order that the amendments contained in this Act be effectuated by July 1, 1993."

Amendments. The 2007 amendment added (7)(C)(iii) and (7)(C)(iv) and made a related change.

CASE NOTES

Cited: Camden v. Harris, 109 F. Supp. 311 (W.D. Ark. 1953).

26-55-203. Effect of reference to subchapter.

(a) Whenever in this subchapter reference is made to a section of this subchapter, the reference shall extend to and include any amendment of or supplement to the section so referred to or any section hereafter enacted in lieu thereof.

(b) Unless otherwise provided, whenever a reference to this subchapter or to any section is made in any amendment or supplement to this subchapter or to any section hereafter enacted, such reference shall be deemed to refer to this subchapter or such section as the same shall then stand or as thereafter amended.

History. Acts 1941, No. 383, § 1; A.S.A. 1947, § 75-1101.

CASE NOTES

Cited: Ragland v. Yeargan, 288 Ark. 81, 702 S.W.2d 23 (1986).

26-55-204. Rules and regulations.

The Director of the Department of Finance and Administration shall prescribe and publish such rules and regulations as may be necessary for the enforcement of this subchapter.

History. Acts 1941, No. 383, § 29;
A.S.A. 1947, § 75-1131.

26-55-205. Levy of tax.

(a) There is levied a privilege or excise tax of eight and one-half cents (8½¢) on each gallon of motor fuel as defined in this subchapter, sold or used in this state, or purchased for sale or use in this state, to be computed in the manner hereinafter set forth.

(b) In addition to the tax levied in subsection (a) of this section, there is levied an excise tax of one cent (1¢) on each gallon of motor fuel as defined in this subchapter, sold or used in this state, or purchased for sale or use in this state, to be computed in the manner hereinafter set forth.

History. Acts 1941, No. 383, § 4; 1943, No. 253, § 1; 1953, No. 112, § 12; 1965 (1st Ex. Sess.), No. 41, § 1; 1967, No. 198, § 2; 1973, No. 445, § 1; 1979, No. 437, § 1; A.S.A. 1947, §§ 75-1106, 75-1269; Acts 1989, No. 821, § 10.

Cross References. Additional taxes and fees, § 26-55-1001 et seq.

Additional taxes on motor fuel, distillate special fuels, and liquified gas special fuels, § 26-55-1201 et seq.

CASE NOTES**ANALYSIS**

In General.
Applicability.

In General.

Acts 1921, No. 606 was not invalid as being arbitrary, unreasonable, or discriminatory in its application in that it did not affect vehicles propelled by steam, electricity, or gasoline purchased out of the state. *Standard Oil Co. v. Brodie*, 153 Ark. 114, 239 S.W. 753 (1922) (decision under prior law).

Applicability.

Acts 1934 (Ex. Sess.), No. 11, § 22, levying a tax on gasoline applied to all gasoline sold or used within the state, whether used on highways or not, except that motor fuel manufactured, produced, or compounded in, or imported into, the state and subsequently sold for exportation was not taxable. *Sparling v. Refunding Bd.*, 189 Ark. 189, 71 S.W.2d 182 (1934) (decision under prior law).

Cited: *Whiteley v. Wilcox Oil Co.*, 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-206. Purpose of tax — Allocation.

(a) The tax imposed by this subchapter is levied for the purpose of providing revenue to be used by the State of Arkansas to defray, in whole or in part, the cost of constructing, widening, reconstructing, maintaining, resurfacing, and repairing the public highways, and retiring highway indebtedness of this state.

(b)(1) The funds collected by this subchapter shall be allocated and distributed only in the manner now established by existing laws relating to motor fuel taxes.

(2) One cent (1¢) of the tax levied on each gallon of motor fuel under this subchapter shall be remitted to the Treasurer of State separate and apart from other motor fuel and distillate special fuel taxes, and the gross amount thereof, without making any deduction therefrom for credit to the Constitutional Officers Fund and the State Central Services Fund, shall be distributed as provided by the Arkansas Highway Revenue Distribution Law, §§ 27-70-201 — 27-70-203, 27-70-206, and 27-70-207.

History. Acts 1941, No. 383, § 3; 1979, No. 437, § 3; A.S.A. 1947, §§ 75-1105, 75-1241.1.

Cross References. Disposition of gross receipts tax on gasohol, § 27-70-208.

CASE NOTES

ANALYSIS

In General.
Construction.

In General.

A legislative declaration that a gasoline tax is a privilege or excise tax is not conclusive where its constitutionality is attacked, as its character must be determined by its incidents. *Sparling v. Refunding Bd.*, 189 Ark. 189, 71 S.W.2d 182 (1934) (decision under prior law).

The tax provided for by Acts 1934 (Ex. Sess.), No. 11 was a privilege and not a property tax. *Sparling v. Refunding Bd.*, 189 Ark. 189, 71 S.W.2d 182 (1934) (decision under prior law).

The gasoline tax had its origin not as a sales tax upon the commodity but as a tax upon the privilege and use of the highways. *McCarroll v. Mitchell*, 198 Ark. 435, 129 S.W.2d 611 (1939) (decision under prior law).

Construction.

This section did not conflict with former statute providing that no person shall drive into the state any motor vehicle operated for hire without first having paid a tax on all motor fuel over 20 gallons, used or to be used, in operating the vehicle while in the state. *McLeod v. Santa Fe Trail Transp. Co.*, 205 Ark. 225, 168 S.W.2d 413 (1943).

26-55-207. Exemptions.

The tax imposed by § 26-55-205 shall not be collected upon or with respect to the following transactions:

(1) The sale of motor fuel by a pipeline importer who has first received such motor fuel into this state via common carrier pipeline, barge, or rail to a duly licensed distributor in this state;

(2) The sale of motor fuel by a duly licensed distributor for export from the State of Arkansas, and shipped by common carrier f.o.b. destination, to any other state or territory or to any foreign country, or the export of motor fuel by a duly licensed distributor from the State of Arkansas to any other state or territory or to any foreign country, if satisfactory proof of actual exportation of all the motor fuel is furnished at the time and in the manner prescribed by the Director of the Department of Finance and Administration;

(3) The sale of motor fuel to the United States Government;

(4) The sale of motor fuel for use in propelling airplanes, provided that satisfactory proof is furnished in the manner prescribed by the director that the motor fuel is to be used in the propelling of airplanes.

History. Acts 1941, No. 383, § 4; 1943, No. 253, § 1; 1947, No. 415, § 1; 1953, No. 112, § 12; 1959, No. 273, § 1; 1965 (1st Ex. Sess.), No. 41, § 1; 1965 (1st Ex. Sess.), No. 43, § 2; 1967, No. 198, § 2; 1979, No. 437, § 1; 1983, No. 830, § 1;

1985, No. 112, § 1; A.S.A. 1947, § 75-1106; Acts 1987, No. 763, § 3.

Publisher's Notes. As to meaning of terms in, and effect of, Acts 1987, No. 763, see Publisher's Notes, § 26-55-202.

CASE NOTES

State Agencies.

State highway department was not exempt from payment of gasoline tax purchased for use in the repair, maintenance, and construction of highways and bridges

in the state highway system. *McCarroll v. Mitchell*, 198 Ark. 435, 129 S.W.2d 611 (1939) (decision under prior law).

Cited: *Whiteley v. Wilcox Oil Co.*, 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-208. Sale of motor fuel exempt from sales or gross receipts tax.

No person selling motor fuel shall be liable to the State of Arkansas for any tax with respect to the sale thereof under the provisions of any sales or gross receipts tax acts of the State of Arkansas.

History. Acts 1941, No. 383, § 28; A.S.A. 1947, § 75-1130.

Cross References. Gasoline tax exempt from gross receipts tax, § 26-52-401.

26-55-209. Local taxes prohibited.

No city, village, town, county, township, or other subdivision or municipal corporation of this state shall levy or collect any excise tax upon or measured by the sale, receipt, or distribution of motor fuel.

History. Acts 1941, No. 383, § 28; A.S.A. 1947, § 75-1130.

26-55-210. Border tax rate areas generally.

(a)(1) The tax on motor fuel sold in cities, incorporated towns, or planned communities which border on a state line or sold within eight hundred feet (800') of the state line or sold within eight hundred feet (800') of the maximum shore line of a navigable lake, the opposite shore line of which is beyond the Arkansas state line or sold within eight hundred feet (800') of the Arkansas terminal of a bridge spanning a river where the state line is in the center of the main channel of the river, when such sales of motor fuel are made therein and delivered into the storage tanks of retail dealers or when such sales are made therein to consumers and delivered into the storage tanks of such consumers or directly into the standard fuel tank of a motor vehicle, shall be at the same rate as the tax levied on motor fuel sold in other areas of the state, but in no event shall the rate of tax on motor fuel sold in such border

areas be more than one cent (1¢) per gallon above the rate of tax levied in the adjoining state.

(2) Further, no existing city or incorporated town, the corporate limits of which did not on August 1, 1941, or planned community, the limits of which did not on May 18, 1965, extend to within two (2) miles of the state line, shall take advantage of such border rate.

(3) Additionally, no tax is imposed upon or in respect to the transactions exempt from taxation under § 26-55-207.

(4) The tax on motor fuel sold from any establishment adjacent to a federal interstate highway and within one (1) mile of a state line shall be at the rate of tax levied in the adjoining state but not exceed the rate levied in this subchapter.

(b) Whenever any bridge spanning a river where the state line is in the center of the main channel of the river as defined and subject to the provisions of subsection (a) of this section shall have been or shall be abandoned, redesigned, relocated, or otherwise changed so that areas previously within eight hundred feet (800') of the Arkansas terminal of a bridge spanning a river where the state line is in the center of the main channel of the river shall no longer be in whole or in part within eight hundred feet (800') of the Arkansas terminal of such bridge, then the tax on motor fuel sold within eight hundred feet (800') of the Arkansas terminal of that bridge prior to its abandonment, redesign, relocation, or other change shall continue to be fixed on the same basis as if no such abandonment, redesign, relocation, or other change of the Arkansas terminal of the bridge had been made or taken place.

(c) Any distributor or dealer of motor fuel who shall sell and deliver any motor fuel within any border rate tax area, except as provided in subsection (a) of this section, shall be guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or be imprisoned in the county jail for not to exceed thirty (30) days, or be both so fined and imprisoned.

(d) This section shall apply to abandonments, redesign, relocation, and other changes of bridges made both before and after the passage of this section.

History. Acts 1941, No. 383, § 5; 1943, No. 252, § 1; 1953, No. 143, § 1; 1957, No. 312, §§ 1, 2; 1967, No. 406, § 1; 1967, No. 512, § 1; 1977, No. 378, § 1; 1979, No. 437, § 4; A.S.A. 1947, §§ 75-1107, 75-1107n, 75-1107.2; Acts 1997, No. 727, § 1.

Publisher's Notes. In reference to the

term "passage of this section," Acts 1941, No. 383 was signed by the Governor on March 26, 1941, and became effective on July 1, 1941.

Cross References. Rate of tax in city or town within one mile of city adjoining state line, § 26-25-104.

RESEARCH REFERENCES

Ark. L. Rev. Recent Development: Arkansas Constitutional Law - "Border City Exemption," 58 Ark. L. Rev. 1005.

CASE NOTES

ANALYSIS

Constitutionality.
Construction.
Incorporated Towns.

Constitutionality.

Acts 1931, No. 63 was not unconstitutional as granting special privileges or immunities nor as abridging the privileges or immunities of citizens of the United States. *Bollinger v. Watson*, 187 Ark. 1044, 63 S.W.2d 642 (1933) (decision under prior law).

This section was held not void on ground it conflicted with § 26-55-230, which contains the only provisions for computation and collection of the tax and there is no provision in the law whereby it may be determined how much fuel has been sold and delivered into the tanks of auto owners' vehicles and how much was sold otherwise, since, under § 26-55-204, rules and regulations may be prescribed requiring dealers to report how much gasoline was sold by them under conditions not permissible at the preferential rate. *Hardin v. Croom*, 203 Ark. 519, 157 S.W.2d 520 (1942).

Construction.

When all of this section is read together, it appears clear that the legislative intent was to allow border dealers a preferential rate only in the circumstances stated. *Hardin v. Croom*, 203 Ark. 519, 157 S.W.2d 520 (1942).

Incorporated Towns.

Gasoline dealers in a town bordering on the state line and incorporated since the passage of act were held not entitled to exemption provided by Acts 1935, No. 147. *Wiseman v. Omaha*, 192 Ark. 718, 94

S.W.2d 116 (1936) (decision under prior law).

In suit to enjoin collection of motor vehicle fuel tax sold within town at a rate in excess of that provided by the laws of bordering state, exclusion of testimony that town, which was incorporated, included a strip of land a quarter of a mile wide and four miles long, that its land was agricultural, timber land, and bluff land and seven-eighths thereof was uninhabited except for isolated farm houses was error, since, under those facts, order of incorporation of the town would be void ab initio and subject to collateral attack. *McCarroll v. Arnold*, 199 Ark. 1125, 137 S.W.2d 921 (1940) (decision under prior law).

In suit to restrain collection of state taxes on sales of gasoline within corporate limits of border town, evidence justified trial court's holding that agricultural and timber lands included in the corporate limits were not needed for urban purposes nor intended to be used for urban purposes and that incorporation was void. *Arnold v. McCarroll*, 200 Ark. 1094, 143 S.W.2d 35 (1940) (decision under prior law).

Where single purpose actuating those who enlarged the territorial area of border town by embracing a narrow strip extending to within state boundary was to provide, by technical means, a method by which gasoline dealers might account for the equivalent of lower tax charged in adjoining state, citizen of state, after Attorney General had ruled in favor of state's view that only lesser rate should be charged, was entitled to bring suit against the state and to enjoin it from collecting only the lesser tax as charged in the adjoining state. *Park v. Hardin*, 203 Ark. 1135, 160 S.W.2d 501 (1942).

26-55-211. Border tax rate applicable within corporate boundaries.

(a) Whenever any territory included within the boundaries of any city, incorporated town, or planned community in this state is included within the border tax rate on motor fuel, as provided for in § 26-55-210, or by any other law of this state governing the border area tax rate on motor fuel, the same rate of tax on motor fuel that applies in the border tax area of the city, incorporated town, or planned community shall also

apply to all sales of motor fuel within the boundaries of the city, incorporated town, or planned community.

(b) Except in a city bordering a state line that is the main channel of the Mississippi River, the provisions of this section shall apply only to that territory included within the limits of such city, incorporated town, or planned community on July 1, 2001, and shall not apply to territory added to or annexed to the city, incorporated town, or planned community after July 1, 2001.

History. Acts 1953, No. 246, § 1; 1965 § 2; A.S.A. 1947, § 75-1107.1; Acts 1997, (1st Ex. Sess.), No. 41, § 8; 1967, No. 45, No. 727, § 2; 2001, No. 1498, § 1. § 1; 1973, No. 507, § 1; 1977, No. 378,

RESEARCH REFERENCES

Ark. L. Rev. Recent Development: Arkansas Constitutional Law - "Border City Exemption," 58 Ark. L. Rev. 1005.

CASE NOTES

Constitutionality.

The classification in Acts 1997, No. 727, § 2, that limited the application of this section only to border cities along the Mississippi River, a small portion of the state, was not rationally related to the purpose of the legislation, which was to

assist certain cities compete with other cities; further, Acts 1997, No. 727, § 2, is clearly local and special legislation enacted in violation of Ark. Const. Amend. 14. *Weiss v. Geisbauer*, — Ark. —, 215 S.W.3d 628 (2005).

26-55-212. Border tax rate areas — Use of auxiliary fuel tanks.

(a) Any consumer of motor fuel who has purchased motor fuel within a border rate area and has obtained delivery of the motor fuel into a storage tank shall not thereafter deliver any such motor fuel into an auxiliary tank attached to any motor vehicle and shall only use such motor fuel in propelling a motor vehicle as has been delivered directly from a storage tank into the standard fuel tank of a motor vehicle.

(b) As used in this section, "standard fuel tank" means the fuel tank attached to the motor vehicle by the original manufacturer of the motor vehicle, except that it shall exclude any auxiliary fuel tank of a motor vehicle even if attached to a motor vehicle by the original manufacturer thereof.

(c) Any consumer who violates this section shall be guilty of a misdemeanor and, upon conviction, shall be fined in any sum of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or be imprisoned in the county jail for not to exceed thirty (30) days, or be both so fined and imprisoned.

History. Acts 1941, No. 383, § 5; 1943, No. 252, § 1; A.S.A. 1947, § 75-1107.

CASE NOTES

ANALYSIS

Constitutionality.
Construction.

Constitutionality.

This section was held not void on ground that it was in restraint of trade for the reason the act imposed no limitation upon the amount of fuel which any purchaser might buy but only upon the amount which might be bought at a single purchase at a reduced rate. *Hardin v. Croom*, 203 Ark. 519, 157 S.W.2d 520 (1942).

Provision of this section requiring gaso-

line to be delivered into standard tank was held not violative of the Constitution in granting certain citizens rights denied to others in that owners of vehicles having larger tanks may buy more motor fuel than owners of smaller tanks. *Hardin v. Croom*, 203 Ark. 519, 157 S.W.2d 520 (1942).

Construction.

When all of this section is read together, it appears clear that the legislative intent was to allow border dealers a preferential rate only in the circumstances stated. *Hardin v. Croom*, 203 Ark. 519, 157 S.W.2d 520 (1942).

26-55-213. Distributor's license — Requirement — Penalty for noncompliance.

(a) It shall be unlawful for any distributor to receive, use, sell, or distribute any motor fuel or to engage in business within this state unless the distributor is the holder of an uncanceled license issued by the Director of the Department of Finance and Administration to engage in such business or, if such distributor is an agent, commission or otherwise, of a distributor as defined in this subchapter, unless the agent is the holder of a certified duplicate copy of an uncanceled license issued by the director to the agent's principal.

(b)(1) Any person who engages in business in the State of Arkansas as a distributor without being the holder of an uncanceled license to engage in the business shall upon conviction be punished by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) or imprisonment in the county jail for a term of not less than thirty (30) days and not more than one (1) year, or both such fine and imprisonment.

(2) Each day or any part thereof during which any person shall engage in business as a distributor without being the holder of an uncanceled license shall constitute a separate offense within the meaning of this section.

History. Acts 1941, No. 383, §§ 7, 25; 1943, No. 250, § 1; 1945, No. 166, § 1; A.S.A. 1947, §§ 75-1109, 75-1127.

26-55-214. Distributor's license — Application and bond.

(a) To procure such license, every distributor shall file with the Director of the Department of Finance and Administration an application upon oath and in such form as the director may prescribe, setting forth:

(1) The name under which the distributor will transact business within the State of Arkansas;

(2) The location, with street address, of its principal office or place of business within this state and all of its separate places of business within this state;

(3) The name and complete residence address of the owner or the names and addresses of the partners, if such distributor is a partnership, or the names and addresses of the principal officer, if such distributor is a corporation or association.

(b)(1) Concurrent with the filing of an application for a license, every distributor shall file with the director a bond of the character stipulated and in the amount provided for in §§ 26-55-222 and 26-55-228 [repealed].

(2) No license shall be issued upon any application unless accompanied by such bond, nor, if the applicant is a foreign corporation, unless it is at such time properly qualified under the laws of the State of Arkansas to do business therein.

(c) The director shall keep and file all applications and bonds with an alphabetical index together with a record of all licensed distributors.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; 1965 (1st Ex. Sess.), No. 41, § 5; A.S.A. 1947, § 75-1109.

A.C.R.C. Notes. Section 26-55-228 referred to in subdivision (b)(1) of this section was repealed by Acts 1995, No. 777, § 1.

26-55-215. Distributor's license — Issuance of certificate.

The application in proper form having been accepted for filing, the bond having been accepted and approved, and the other conditions and requirements of §§ 26-55-213 and 26-55-214 having been complied with, the Director of the Department of Finance and Administration shall issue to the distributor a license certificate to transact business as a distributor in the State of Arkansas.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; 1965 (1st

Ex. Sess.), No. 41, § 6; A.S.A. 1947, § 75-1109.

26-55-216. Distributor's license — Nonassignable.

The license certificate issued by the Director of the Department of Finance and Administration shall not be assignable and shall be valid only for the distributor in whose name it was issued.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; A.S.A. 1947, § 75-1109.

26-55-217. Distributor's license — Display required.

(a) The license certificate issued by the Director of the Department of Finance and Administration shall be displayed conspicuously in the principal place of business of the distributor in the State of Arkansas.

(b) A certified duplicate copy of the license certificate shall be displayed conspicuously at each separate place of business of the distributor in the State of Arkansas. By appropriate language, the copy shall refer to and identify the agent of such distributor in charge of the separate place of business of the distributor.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; A.S.A. 1947, § 75-1109.

26-55-218. Distributor's license — Expiration.

The license shall remain in full force and effect until cancelled as provided in this subchapter.

History. Acts 1941, No. 383, § 7; 1943, Ex. Sess.), No. 41, § 6; A.S.A. 1947, § 75-1109. No. 250, § 1; 1945, No. 166, § 1; 1965 (1st

26-55-219. Distributor's license — Refusal.

(a) In the event that any application for a license to transact business as a distributor in the State of Arkansas shall be filed by any person whose license shall at any time have been cancelled for cause by the Director of the Department of Finance and Administration, or in case the director shall be of the opinion that the application is not filed in good faith or in the event that the application is filed by some person as a subterfuge for the real person in interest whose license or registration shall theretofore have been cancelled for cause by the director, or for any other valid reason, then and in any of said events the director, after a hearing of which the applicant shall have been given five (5) days' notice in writing and at which the applicant shall have the right to appear in person or by counsel and present testimony, shall have and is given the right and authority to refuse to issue to such person a license certificate to transact business as a distributor in the State of Arkansas.

(b) Any distributor who is aggrieved by the action of the director in refusing to issue the license applied for, within thirty (30) days from the time of such refusal, may appeal to the circuit court of the county of such distributor's residence where the distributor shall be entitled to a hearing de novo. An appeal shall lie from such circuit court to the Supreme Court as in other cases now provided by law.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; A.S.A. 1947, § 75-1109.

26-55-220. Municipal licenses for distributors.

Nothing in §§ 26-55-213 — 26-55-219 shall be construed so as to prevent the collection of any privilege or occupation taxes by any municipality of this state for engaging within the limits of such municipality in the business of distributor or the business of selling, dealing in, or storing petroleum products.

History. Acts 1941, No. 383, § 7; 1943, Ex. Sess., No. 41, § 5; A.S.A. 1947, § 75-No. 250, § 1; 1945, No. 166, § 1; 1965 (1st 1109.

26-55-221. Licenses — Persons other than distributors.

Persons, other than distributors, purchasing or otherwise acquiring motor fuel in tank car, tank truck, or cargo lots for sale, distribution, or use within the State of Arkansas, in the discretion of the Director of the Department of Finance and Administration shall also be licensed as set forth in §§ 26-55-213 — 26-55-220 upon compliance with the provisions of §§ 26-55-213 — 26-55-220 and thereupon shall be deemed to be the distributor for all purposes of this subchapter with respect to any such motor fuel received while the license remains unrevoked.

History. Acts 1941, No. 383, § 8; A.S.A. 1947, § 75-1110.

26-55-222. Bonds — Requirement — Amounts — Waiver.

(a)(1) Every distributor shall file with the Director of the Department of Finance and Administration a surety bond of not less than one and one-half ($1\frac{1}{2}$) times or one hundred fifty percent (150%) of the prior six (6) months average motor fuel tax due, based upon the gallonage of motor fuel to be sold or distributed as shown by the application for a permit if the applicant has not heretofore been engaged in the business of a distributor as herein defined, or as shown by sales for the previous year if the applicant theretofore has been engaged in such business in this state.

(2) However, no bond shall be filed for less than one thousand dollars (\$1,000).

(3) If the director deems it necessary to protect the state in the collection of gasoline taxes, the director may require any distributor to post a bond in an amount up to three (3) times or three hundred percent (300%) of the prior six (6) months average motor fuel tax due.

(b)(1) Provided further, the director or the director's authorized agent is authorized to waive the posting of bond by any licensed motor fuel distributor that is organized and operating under the laws of Arkansas and that is wholly owned by residents of this state and who has been licensed for a period of at least three (3) years and who has not been delinquent in remitting motor fuel taxes during the three-year period immediately preceding application by the distributor for waiver of bond.

(2) If any motor fuel distributor whose bond has been waived by the director or the director's agent as authorized in this subsection subsequently becomes delinquent in remitting motor fuel taxes to the director, the director or the director's agent may require that such distributor post a bond in the amount required in this section, and such distributor shall not be eligible to petition for a waiver of bond for a period of three (3) years thereafter.

History. Acts 1941, No. 383, § 9; 1957, § 1; 1979, No. 644, § 1; 1981, No. 276, No. 393, § 1; 1965 (1st Ex. Sess.), No. 43, § 1; A.S.A. 1947, § 75-1111; Acts 1989, § 1; 1967, No. 311, § 1; 1971, No. 295, No. 168, § 1.

CASE NOTES

Cited: Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-223. Bonds — Deposit or pledge of government obligations as alternative.

In lieu of furnishing a bond executed by a surety company, as hereinbefore provided, any distributor may furnish the distributor's bond or bonds not so executed, if the distributor concurrently therewith deposits and pledges with the Director of the Department of Finance and Administration direct obligations of the United States or obligations of any agency of the United States fully guaranteed by it or bonds of the State of Arkansas of equal full amount to the amount of the bond required by § 26-55-222, as collateral security for the payment of such bonds.

History. Acts 1941, No. 383, § 9; 1957, No. 393, § 2; A.S.A. 1947, § 75-1111.

CASE NOTES

Cited: Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-224. Bonds — Additional bonds — Conditions for requirement.

(a) In the event that upon a hearing, of which the distributor shall be given five (5) days' notice in writing, the Director of the Department of Finance and Administration shall decide that the amount of the existing bond is insufficient to ensure payment to the State of Arkansas of the amount of the tax and any penalties and interest for which the distributor is or may at any time become liable, then the distributor upon the written demand of the director shall immediately file an additional bond in the same manner and form with a surety company thereon approved by the director in any amount determined by the director to be necessary to secure at all times the payment by such

distributor to the State of Arkansas of all taxes, penalties, and interest due under the provisions of this subchapter.

(b) If the distributor fails to do so, the director shall immediately cancel the license certificate of the distributor.

History. Acts 1941, No. 383, § 9; A.S.A. 1947, § 75-1111.

CASE NOTES

Cited: *Whiteley v. Wilcox Oil Co.*, 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-225. Bonds — New bonds — Conditions for requirement.

(a) In the event that liability upon the bond thus filed by the distributor with the Director of the Department of Finance and Administration shall be discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if in the opinion of the director any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, then the director may require the distributor to file a new bond with a satisfactory surety in the same form and amount, failing which the director shall immediately cancel the license certificate of said distributor.

(b) If the new bond is furnished by the distributor as above provided, the director shall cancel and surrender the bond of the distributor for which the new bond shall be substituted.

History. Acts 1941, No. 383, § 9; A.S.A. 1947, § 75-1111.

CASE NOTES

Cited: *Whiteley v. Wilcox Oil Co.*, 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-226. Bonds — Release or discharge of surety.

(a)(1) Any surety on any bond furnished by a distributor as provided in §§ 26-55-222 — 26-55-225 shall be released and discharged from any and all liability to the State of Arkansas accruing on the bond after the expiration of sixty (60) days from the date upon which the surety shall have lodged with the Director of the Department of Finance and Administration written request to be released and discharged.

(2) However, the request shall not operate to relieve, release, or discharge the surety from any liability already accrued, or which shall accrue, before the expiration of the sixty-day period.

(b)(1) The director shall promptly on receipt of notice of such request notify the distributor who furnished the bond, and unless the distributor on or before the expiration of such sixty-day period files with the director a new bond with a surety company satisfactory to the director

in the amount and form provided in § 26-55-222, the director shall immediately cancel the license of the distributor.

(2) If the new bond is furnished by the distributor as provided above, the director shall cancel and surrender the bond of the distributor for which the new bond shall be substituted.

History. Acts 1941, No. 383, § 9; A.S.A. 1947, § 75-1111.

CASE NOTES

Cited: Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-227. [Repealed.]

Publisher's Notes. This section, concerning the waiver of bonds, was repealed by Acts 1989, No. 168, § 2. The section

was derived from Acts 1941, No. 383, § 9; 1979, No. 644, § 1; 1981, No. 276, § 1; A.S.A. 1947, § 75-1111.

26-55-228. [Repealed.]

Publisher's Notes. This section, concerning the unlawful sale of motor fuel to an unbonded dealer, was repealed by Acts

1995, No. 777, § 1. The section was derived from Acts 1941, No. 383, § 9; 1957, No. 393, § 2; A.S.A. 1947, § 75-1111.

26-55-229. Tax reports.

(a) For the purpose of determining the amount of the tax imposed by this subchapter, the Director of the Department of Finance and Administration may require such supporting documents as the director may deem necessary to assure accurate reporting.

(b)(1) The reports shall be filed on forms prescribed by the director and shall be filed with the director on or before the twenty-fifth day of each calendar month following the reporting month in question.

(2) Once a distributor has become liable to file a monthly report with the director, the distributor must continue to file a monthly report, even though no tax is due, until such time as the distributor notifies the director in writing that the distributor is no longer liable for monthly reports.

(c) These reports shall include the following:

(1) An itemized statement of the number of gallons of all motor fuel received during the next-preceding calendar month by the distributor, which has been produced, refined, prepared, distilled, manufactured, or compounded by the distributor in the State of Arkansas;

(2) An itemized statement of the number of gallons of all motor fuel received by the distributor in the State of Arkansas from any source whatsoever during the next-preceding calendar month as shown by the shipper's bills of lading thereof, other than motor fuel falling within the provisions of subdivision (1) of this subsection, together with a statement showing:

- (A) The date of receipt of each shipment of motor fuel;
 - (B) The name of the person from whom purchased or received;
 - (C) The point of origin and the point of destination of each shipment;
 - (D) The quantity of each of the purchases or shipment;
 - (E) The name of the carrier;
 - (F) The number of each tank car or tank truck;
 - (G) The number of gallons contained in each tank car or tank truck; and
 - (H) The owner of the boat, ship, barge, or vessel, if shipped by water;
- (3) An itemized statement of the number of gallons of motor fuel deducted in accordance with the provisions of § 26-55-230(a)(1)(C) or § 26-55-230(a)(1)(D) in making any previous monthly report with respect to which motor fuel so deducted the tax payable under the terms of this subchapter have not theretofore been paid;
- (4) An itemized statement of the number of gallons of motor fuel sold by the distributor during the preceding calendar month and exempted from the tax by § 26-55-207(1)-(4), separately itemizing the amount of motor fuel sold and claimed to be exempt under each of the subdivisions (1)-(4) of § 26-55-207; and the statement shall furnish such information relating to such sales as shall be required by the director and reasonably necessary to the enforcement by the director of the provisions of this subchapter;
- (5) An itemized statement of the number of gallons of motor fuel sold by the distributor within a border rate area and at the border rate tax, as is permitted by §§ 26-55-210 and 26-55-212, together with such information relating to such sales as shall be required by the director and reasonably necessary to the enforcement by the director of the provisions of this subchapter;
- (6) An itemized statement of the number of gallons of motor fuel which, during the next-preceding month, was received, within the meaning of § 26-55-202(13)(A) or § 26-55-202(13)(B), by being placed in a tank, but which had not been withdrawn therefrom at the close of the next preceding calendar month;
- (7) An itemized statement of the number of gallons of motor fuel received during the next-preceding calendar month and deductible under the provisions of § 26-55-230(a)(1)(D);
- (8) An itemized statement of the number of gallons of motor fuel received by the distributor during the next-preceding calendar month which were purchased by the distributor, tax-paid, and supported by copies of the seller's tax-paid invoices.

History. Acts 1941, No. 383, § 10; 1943, No. 253, § 2; 1979, No. 802, § 1; A.S.A. 1947, § 75-1112; Acts 1987, No. 763, § 4; 1991, No. 688, § 1.

Publisher's Notes. As to meaning of terms in, and effect of, Acts 1987, No. 763, see Publisher's Notes, § 26-55-202.

26-55-230. Computation and payment of tax.

(a) At the time of filing of each monthly report with the Director of the Department of Finance and Administration, each distributor shall pay to the director the full amount of the motor fuel tax for the next-preceding calendar month, which shall be computed as follows:

(1) From the sum of the total number of gallons of motor fuel received, reduced by the total number of gallons received upon which the tax has been paid as evidenced by the itemized statement filed pursuant to § 26-55-229(c)(8) by the distributor within the State of Arkansas during the next-preceding calendar month, plus the total number of gallons of motor fuel deducted on any previous monthly report of the distributor under the provisions of subdivisions (a)(1)(C) and (D) of this section with respect to which the tax payable under this subchapter remains unpaid, shall be made the following deductions:

(A) The total number of gallons of motor fuel received by the distributor within the State of Arkansas and sold or otherwise disposed of during the next-preceding calendar month as set forth in § 26-55-207;

(B) The total number of gallons of motor fuel received by the distributor within the State of Arkansas and sold or otherwise disposed of during the next-preceding calendar month as set forth in § 26-55-210;

(C) The total number of gallons of motor fuel which, during any previous calendar month, was received, within the meaning of § 26-55-202(13)(A) or § 26-55-202(13)(B), by being placed in a tank but had not been withdrawn therefrom at the close of the next-preceding calendar month;

(D) The total number of gallons of motor fuel received during any previous calendar month, within the meaning of § 26-55-202(13)(A), by being placed in a tank, which was thereafter delivered by the person receiving it to a common carrier pipeline for shipment or delivery to a point in Arkansas, but had not been, at the close of the next-preceding calendar month, delivered by the pipeline at its destination, even though because of being mingled in the common carrier pipeline system with other motor fuel, the motor fuel to be delivered to the point of destination is not the identical motor fuel delivered by the shipper to the common carrier pipeline;

(E)(i) That number of gallons of motor fuel lost due to fire, flood, storm, theft, or other cause beyond the distributor's control, other than through evaporation.

(ii) The deduction for the loss may be included in the report filed for the month in which the loss occurred or in any subsequent report filed within a period of one (1) year;

(F)(i) That number of gallons of motor fuel which shall be equal to three percent (3%) of the first one million gallons (1,000,000 gals.), and no allowance for the remaining gallons of the total number of gallons of motor fuel received by the distributor during the next-

preceding calendar month, less the total number of gallons deducted under subdivisions (a)(1)(A)-(E) of this section.

(ii) It is determined by the General Assembly that three percent (3%) of the first one million gallons (1,000,000 gals.) and no allowance for the remaining gallons so received is the actual and average amount of loss resulting from evaporation, shrinkage, and the losses resulting from unknown causes irrespective of the amount thereof, and the cost of collection;

(2) The number of gallons remaining after the deductions hereinabove set forth have been made shall be multiplied by the rate of tax provided in § 26-55-205;

(3) The remaining number of gallons computed on a volumetric basis shall be multiplied by the rate provided by law in the adjoining state, such rate not to exceed the rate provided by § 26-55-205, and the resulting figure, together with the figure obtained in subdivision (a)(2) of this section, shall be the total amount of motor fuel tax due for the next-preceding calendar month.

(b) In reporting and computing this tax, distributors shall adjust all volume measurements of motor fuel to a temperature of sixty degrees Fahrenheit (60° F).

(c) The director by regulation shall provide for the payment and collection of the motor fuel tax when it is due but which under the terms of this subchapter is not required to be remitted by a distributor.

History. Acts 1941, No. 383, § 10; 1943, No. 253, § 2; 1949, No. 352, § 1; 1965 (1st Ex. Sess.), No. 41, § 2; 1979, No. 686, § 1; A.S.A. 1947, § 75-1112; Acts 1987, No. 763, § 5; 1989, No. 821, § 10.

Publisher's Notes. As to meaning of terms in, and effect of, Acts 1987, No. 763, see Publisher's Notes, § 26-55-202.

CASE NOTES

ANALYSIS

In General.

Collections.

Credits.

Deductions.

In General.

The term "expenditures," contained in Ark. Const., Art. 19, § 12 does not include the shrinkage allowance permitted to motor fuel distributors. *Snyder v. Martin*, 305 Ark. 128, 806 S.W.2d 358 (1991).

Collections.

Filling station operator not licensed as distributor was not entitled to recover from distributor retainage allowed such distributor on taxes collected on motor fuel shipped to filling station on theory that distributor was unjustly enriched.

Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

Credits.

That certain gasoline was destroyed, or lost by fire, after tax was paid, did not entitle manufacturer or dealer to credit upon new shipments for amount of tax paid upon destroyed gasoline. *Barnsdall Ref. Corp. v. Ford*, 194 Ark. 658, 109 S.W.2d 151 (1937) (decision under prior law).

Deductions.

Acts 1929, No. 146 did not authorize the reduction or exemption of one percent from tank truck shipments. *Barnsdall Ref. Corp. v. Ford*, 194 Ark. 658, 109 S.W.2d 151 (1937) (decision under prior law).

A wholesale dealer in gasoline received in this state by barge was not entitled to

deduction from gallonage tax for evaporation loss on gasoline actually delivered to it in this state. *Terminal Oil Co. v. McCarroll*, 201 Ark. 830, 147 S.W.2d 352 (1941), criticized, *Foote's Dixie Dandy, Inc. v. McHenry*, 270 Ark. 816, 607 S.W.2d 323, 21 A.L.R.4th 565 (1980) (decision under prior law).

The deduction permitted by statute for "shrinkage allowance" is not an appropriation of public money within the framework of Ark. Const., Art. 19, § 12. It is merely a deduction, nothing more. *Snyder v. Martin*, 305 Ark. 128, 806 S.W.2d 358 (1991).

26-55-231. Failure to report or pay tax — Revocation or cancellation of license.

(a)(1) If a distributor at any time files a false monthly report of the data or information required by this subchapter or fails, refuses, or neglects to file the monthly report required by this subchapter, or to pay the full amount of the tax as required by this subchapter, the Director of the Department of Finance and Administration may give notice to the distributor of an intention to revoke the license of the distributor.

(2) The distributor shall be entitled to a period of five (5) days after receipt of the notice from the director, within which to apply for a hearing before the director on the question of having the distributor's license revoked. The director shall grant a hearing at such time and place as the director may designate of which the distributor shall have five (5) days' advance notice in writing.

(3) After the hearing, at which time the distributor shall be entitled to present evidence and argument of counsel, the director shall decide whether the distributor's license shall be revoked.

(4)(A) Upon the issuance of an order revoking the license, the distributor shall be entitled to an appeal to the circuit court in the county where the distributor may do business where the question shall be tried de novo.

(B) An appeal shall lie from the circuit court of that county as in other cases provided by law.

(5) If the distributor fails to apply for a hearing within the time set out in subdivision (a)(2) of this section, the director may forthwith cancel the license of the distributor and notify the distributor of the cancellation by registered mail to the last known address of the distributor appearing on the files of the director. The director shall also notify the surety company on the distributor's bond in like manner.

(b)(1) Upon receipt of a written request from any distributor licensed under this subchapter to cancel the license issued to the distributor, the director shall have the power to cancel the license effective sixty (60) days from the date of the receipt of the written request.

(2) However, no such license shall be cancelled upon the request of any distributor unless and until the distributor prior to the date of the cancellation shall have paid to the State of Arkansas all excise taxes payable under the laws of the State of Arkansas, together with any and all penalties, interest, and fines accruing under any of the provisions of this subchapter, and unless and until the distributor shall have surrendered to the director the license certificate theretofore issued to the distributor.

(c) If upon investigation the director ascertains and finds that any person to whom a license has been issued under this subchapter is no longer engaged in the receipt, use, or sale of motor fuel as a distributor and has not been so engaged for a period of sixty (60) days, the director shall have the power to cancel the license by giving the person thirty (30) days' notice of the cancellation mailed to the last known address of the person, in which event the license certificate theretofore issued to the person shall be surrendered to the director. -

(d) In the event that the license of any distributor shall be cancelled by the director as provided in this section and in the further event that the distributor shall have paid to the State of Arkansas all excise taxes due and payable by it under this subchapter, together with any and all penalties accruing under any of the provisions of this subchapter, then the director shall cancel and surrender the bond filed by the distributor.

History. Acts 1941, No. 383, § 11;
A.S.A. 1947, § 75-1113.

CASE NOTES

Cited: Whiteley v. Wilcox Oil Co., 225
Ark. 293, 280 S.W.2d 903 (1955).

26-55-232. Failure to report or pay taxes promptly — Penalties.

(a) When any distributor fails to file its monthly report with the Director of the Department of Finance and Administration on or before the time fixed in this subchapter for the filing thereof or when the distributor fails to submit the data outlined in §§ 26-55-229 and 26-55-230 in the monthly report, or when the distributor fails to pay to the director the amount of excise taxes due to the State of Arkansas when the excise taxes are payable, the distributor shall forfeit two percent (2%) of the amount due if the taxes are not remitted or paid within ten (10) days after the due date, and an additional eight percent (8%) shall be forfeited if the taxes are not remitted or paid on or before the thirtieth day after the taxes become due.

(b)(1) If the tax and penalty are not paid within sixty (60) days after the tax and penalty become due, then the license of the distributor shall be suspended.

(2) Thereafter the tax and penalty shall bear interest at the rate of one percent (1%) per month until paid.

(3) At the end of the sixty (60) days, the director shall notify the bonding company of the delinquency and declare the bond forfeited and shall certify the delinquent account to the Office of Revenue Legal Counsel of the Revenue Division of the Department of Finance and Administration for collection.

(c) However, when failure to pay the tax or file the sworn reports required by this subchapter within the time prescribed by law or when errors or omissions in the reports or payments are the result of mistake or arise from circumstances beyond the control of the licensed distribu-

tor and the delinquency or inaccuracy was unavoidable and devoid of intent to evade the tax, the director in his or her discretion may waive the additional eight percent (8%) penalty and the interest prescribed in this section.

(d) Deposit in the United States mails, with postage prepaid of the report or remittance in payment of the taxes, in sufficient time to reach the director in the ordinary course of the mails on or before the twenty-fifth day of the month, shall be deemed compliance with this section, even though the report or remittance in fact shall not reach the director until after the twenty-fifth day of the month.

History. Acts 1941, No. 383, § 12; 1943, No. 255, § 1; 1957, No. 393, § 3; A.S.A. 1947, § 75-1114.

26-55-233. Failure to file report — Assessment and collection of tax.

(a) Whenever any distributor neglects or refuses to make and file any report for any calendar month as required by this subchapter or files an incorrect or fraudulent report, then the Director of the Department of Finance and Administration shall:

(1) Determine upon such information as may be available to the director the number of gallons of motor fuel with respect to which the distributor has incurred liability under the motor fuel tax laws of the State of Arkansas for any particular month; and

(2) Fix the amount of taxes and penalties payable to the director by the distributor under this subchapter accordingly.

(b)(1) In any action or proceeding for the collection of the motor fuel tax or any penalties or interest imposed in connection therewith, an assessment by the director of the amount of tax due or interest or penalties due to the state shall constitute prima facie evidence of the claim of the state and the burden of proof shall be upon the distributor to show that the assessment was incorrect and contrary to law.

(2) However, no assessment shall be made for any month after the expiration of three (3) years from the date set for the filing of the monthly return, except that, in case of a false or fraudulent report with intent to evade tax or of failure to file a report, assessment may be made at any time.

History. Acts 1941, No. 383, § 13; 1967, No. 197, § 1; A.S.A. 1947, § 75-1115.

26-55-234. Statements and reports from persons not distributors.

(a) Every person or terminal purchasing or otherwise acquiring motor fuel by pipeline, tank car, tank truck, or cargo lot and selling, using, or otherwise disposing of the motor fuel for delivery in Arkansas

not required by a provision of this subchapter to be licensed as a distributor in motor fuel shall file a statement setting forth the:

(1) Name under which the person or terminal is transacting business within the State of Arkansas and the location with the street number address of that person's or terminal's principal office or place of business within the state; and

(2) Name and address of the owner, names and addresses of the partners if the person or terminal is a partnership, or names and addresses of the principal officers if the person or terminal is a corporation or association.

(b)(1) On or before the twenty-fifth day of each calendar month on forms prescribed by the Director of the Department of Finance and Administration, the person shall report to the director all purchases or other acquisitions and sales or other disposition of motor fuel during the next preceding calendar month giving a record of each tank car, tank truck, or cargo lot delivered to a point within the state and of all motor fuel otherwise delivered to the person.

(2) The report shall set forth:

(A) From whom each tank car or cargo lot was purchased or otherwise acquired;

(B) The point of shipment;

(C) To whom sold or shipped;

(D) The point of delivery;

(E) The date of shipment;

(F) The name of the carrier;

(G) The initials and number of the tank car;

(H) The number of gallons contained in the tank car if shipped by rail;

(I) The name and owner of the boat, barge, or vessel, and the number of gallons contained in the boat, barge, or vessel if shipped by water; and

(J) Any other additional information the director may require relative to the motor fuel.

(c) On or before the twenty-fifth day of each calendar month on forms prescribed by the director, the terminal shall report to the director all purchases or other acquisitions and sales or other disposition of motor fuel during the next preceding calendar month, which report shall include the following:

(1) Beginning inventories in gallons of motor fuel in storage;

(2) Ending inventories in gallons of motor fuel in storage;

(3) Withdrawals of motor fuel in gallons from the pipeline outlet resulting in additions of motor fuel to storage, including the name of the distributor licensed as an importer who requested the placement of the motor fuel into storage; and

(4) Removals of motor fuel from storage, specifically including:

(A) Bill of lading numbers which represent physical movements of the motor fuel;

(B) The date of each removal;

(C) The quantity in gallons of motor fuel so removed;

(D) The person who had the motor fuel available for that particular removal; and

(E) The person possessing a license from the director who requested the removal of the motor fuel from that storage.

(d) When any person or terminal purchasing or otherwise acquiring motor fuel by pipeline, in a tank car, tank truck, or cargo lot and selling or otherwise disposing of the motor fuel for delivery in Arkansas and not required by a provision of this subchapter to register as a distributor in motor fuel, fails to submit the person's or terminal's monthly report to the director by the twenty-fifth day of each calendar month or when the person or terminal fails to submit in the monthly report the data required by this subchapter, the person or terminal shall be guilty of a violation and shall be fined an amount not greater than one hundred dollars (\$100) for the first offense and shall be fined an amount not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each subsequent offense.

History. Acts 1941, No. 383, § 14; A.S.A. 1947, § 75-1116; Acts 1993, No. 1029, § 2; 2005, No. 1994, § 175; 2007, No. 827, § 225.

Publisher's Notes. Acts 1993, No. 1029, § 7, provided: "The Director of the Department of Finance and Administration is hereby directed, with the advise and concurrence of the Director of Highways and Transportation, or his designee,

to make and promulgate all rules and regulations deemed necessary or desirable by such Directors in order that the amendments contained in this Act be effectuated by July 1, 1993."

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (d).

The 2007 amendment rewrote (a).

26-55-235. Reports from carriers transporting motor fuel.

(a) Every railroad company, and every street, suburban, or interurban railroad company, every pipeline company, every water transportation company, and every common carrier transporting motor fuel, kerosene, or other hydrocarbon products, either in interstate or in intrastate commerce, to points within Arkansas, and every person transporting motor fuel or kerosene by whatever manner to a point within the state from any point outside of the state shall report under oath to the Director of the Department of Finance and Administration, on forms prescribed by the director, all deliveries of motor fuel, kerosene, or other hydrocarbon products, so made to points within Arkansas.

(b) The reports shall cover monthly periods and shall be submitted within twenty-five (25) days after the close of the month covered by the report and shall show:

(1) The name and address of the person to whom the deliveries of motor fuel have in fact been made;

(2) The name and address of the originally named consignee if motor fuel has been delivered to any other than the originally named consignee;

(3) The point of origin, the point of delivery, the date of delivery, and the number and initials of each tank car and the number of gallons contained therein if shipped by rail;

(4) The name of the boat, barge, or vessel and the number of gallons contained therein if shipped by water;

(5) The license number of each tank truck, the number of gallons contained therein, and the bill of lading number, if transported by motor truck;

(6) The point of origin, the name and address of the person or terminal to whom the delivery was made, the date of the delivery, and the quantity of motor fuel delivered, if shipped by pipeline company; and

(7) The manner and quantities, if delivered by other means, in which the delivery is made.

(c) The reports shall also show such additional information relative to shipments of motor fuel as the director may require.

History. Acts 1941, No. 383, § 15; A.S.A. 1947, § 75-1117; Acts 1993, No. 1029, § 3.

Publisher's Notes. Acts 1993, No. 1029, § 7, provided: "The Director of the Department of Finance and Administration is hereby directed, with the advise

and concurrence of the Director of Highways and Transportation, or his designee, to make and promulgate all rules and regulations deemed necessary or desirable by such Directors in order that the amendments contained in this Act be effectuated by July 1, 1993."

26-55-236. Failure to file reports, statements, or returns — Falsification — Penalties.

Any person who refuses or neglects to make any statement, report, or return required by the provisions of this subchapter or who knowingly makes, or aids, or assists any other person in making a false statement in a return or report to the Director of the Department of Finance and Administration upon conviction shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) or imprisonment in the county jail for a term of not less than thirty (30) days and not more than one (1) year, or both such fine and imprisonment.

History. Acts 1941, No. 383, § 25; A.S.A. 1947, § 75-1127.

26-55-237. Retention of records by distributors and dealers — Penalty for noncompliance.

(a) Each distributor shall maintain and keep for a period of two (2) years records of motor fuel received, used, sold, or delivered, within this state by the distributor, together with invoices, bills of lading, and other pertinent records and papers as may be required by the Director of the Department of Finance and Administration for the reasonable administration of this subchapter.

(b) It shall be the duty of every dealer receiving motor fuel in this state to maintain and keep for a period of two (2) years a record of motor fuel received and the purchase price, together with delivery tickets, invoices, and bills of lading, and such other records as the director shall require.

(c) Records ordinarily kept outside the State of Arkansas by any distributor in the usual course of business shall be produced within the State of Arkansas upon proper demand of the director.

(d) Any person willfully violating any of the provisions of this section shall be guilty of a misdemeanor and upon the conviction shall be sentenced to pay a fine of one thousand dollars (\$1,000) and costs of prosecution or to undergo imprisonment for not more than one (1) year, or both in the discretion of the court.

History. Acts 1941, No. 383, § 16;
A.S.A. 1947, § 75-1118.

26-55-238. Inspection of records, books, etc. — Examination of witnesses.

(a) The Director of the Department of Finance and Administration shall have the power to require any person, firm, corporation, or association of persons engaged in the handling, sale, or distribution of gasoline or motor vehicle fuel, either as a distributor or as a retailer, to furnish any information other than the statements mentioned in § 26-55-237 by the director, deemed to be necessary for the purpose of enforcing the collection of the tax. For this purpose the director shall have authority to examine the books, records, papers, and files and storage tanks and any other equipment of such persons, firms, corporations, or associations of persons.

(b)(1) To this end, the director shall have the power and authority to administer oaths and examine witnesses.

(2)(A) If any witness fails or refuses to appear at the request of the director and give evidence under oath or refuses access to books, records, papers, and files and storage and any other equipment, the director shall certify the facts and the names of the witnesses failing and refusing to appear, refusing to give evidence, or refusing access to the books, papers, records, files, and storage tanks to the judge of the circuit court of this state having jurisdiction over the witness or witnesses.

(B) Thereupon, the judge shall direct that a summons issue out of the court directed to the witnesses commanding their appearance in the court on a day to be fixed and to be continued as occasion may require, and there give evidence, if within the knowledge of the witnesses, and produce and open for inspection the books, papers, records, and files as may be required for the purpose of ascertaining any facts necessary for the enforcement of the collection of the tax provided for in this subchapter.

(C) Upon the failure of the witnesses to appear in obedience to the summons, to give evidence and produce and open for inspection the

books, records, papers, and files, and permit access to the storage tanks without satisfactory excuse, the witness shall be deemed guilty of contempt of court and shall be punished in the manner provided for that offense.

History. Acts 1941, No. 383, § 17;
A.S.A. 1947, § 75-1119.

26-55-239. Forms for reports or records.

The Director of the Department of Finance and Administration shall have the authority to prescribe all forms upon which reports shall be made to the director or forms of records to be used by distributors.

History. Acts 1941, No. 383, § 17;
A.S.A. 1947, § 75-1119.

26-55-240. Discontinuance or transfer of business.

(a)(1) Whenever a distributor ceases to engage in business as a distributor within the State of Arkansas by reason of the discontinuance, sale, or transfer of the business of the distributor, it shall be the duty of the distributor to notify the Director of the Department of Finance and Administration in writing at least ten (10) days prior to the time the discontinuance, sale, or transfer takes effect.

(2) The notice shall give the date of discontinuance and, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee.

(b)(1) All taxes, penalties, and interest under this subchapter, not yet due and payable under the provisions of this subchapter, together with any and all interest accruing or penalties imposed under this subchapter, notwithstanding any provisions thereof, shall become due and payable concurrently with the discontinuance, sale, or transfer.

(2) It shall be the duty of any such distributor concurrently with the discontinuance, sale, or transfer to make a report and pay all such taxes, interest, and penalties, and to surrender to the director the license certificate theretofore issued to the distributor by the director.

(c) Unless the notice provided for in subsection (a) of this section shall have been given to the director as provided in subsection (a) of this section, the purchaser or transferee shall be liable to the State of Arkansas for the amount of all taxes, penalties, and interest under this subchapter accrued against any such distributor selling or transferring the distributor's business, on the date of the sale or transfer but only to the extent of the value of the property and business acquired from the distributor.

(d) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be sentenced to pay a fine of not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300) and costs of the prosecution, or to undergo imprisonment for not more than one (1) year or both.

History. Acts 1941, No. 383, § 19;
A.S.A. 1947, § 75-1121.

26-55-241. Unpaid tax — Lien on property — Enforcement.

(a) If any person liable for the tax imposed by the provisions of this subchapter neglects or refuses to pay the tax, the amount of the tax, including any interest, penalty, or addition to the tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by the person whether the property is employed by the person in the prosecution of business or is in the hands of an assignee, trustee, or receiver for the benefit of creditors from the date the taxes are due and payable as provided in this subchapter.

(b)(1) The lien may be enforced by the Director of the Department of Finance and Administration by filing a certificate of indebtedness as provided for in § 26-55-243 or by any other legal means.

(2) The action of the director in attempting to collect the delinquent taxes by issuing the certificate of indebtedness shall not be construed to be an election of remedies.

History. Acts 1941, No. 383, § 18;
A.S.A. 1947, § 75-1120.

CASE NOTES

Statutes of Limitation.

Where state obtained judgment on certificate of indebtedness for gasoline taxes, but did not procure a writ or execution to collect or preserve its judgment, the right of the state to claim a lien was barred

after three years, since such lien was not excepted from the three-year limitation provided for liens of judgments. *Lion Oil & Refining Co. v. Rex Oil Co.*, 195 Ark. 1021, 115 S.W.2d 556 (1938) (decision under prior law).

26-55-242. Sale of distributor's property — Certificate of lien.

(a) Neither the sheriff of any county where the property affected is situated nor any receiver, assignee, or other officer shall sell the property or franchise of any person who is a distributor without first filing with the Director of the Department of Finance and Administration a statement containing:

(1) The name of the plaintiff or party at whose instance or upon whose account the sale is made;

(2) The name of the person whose property or franchise is to be sold;

(3) The time and place of sale;

(4) The nature of the property; and

(5) The location of the property.

(b) It shall be the duty of the director, after receiving notice as provided in subsection (a) of this section, to furnish to the sheriff, receiver, assignee, or other officer having charge of the sale, certified copies of all motor fuel tax, penalties, and interest on file as liens

against the person and, in the event that there are no such liens, a certificate showing that fact. The certified copies of the certificate shall be publicly read by that officer at and immediately before the sale of the property or franchise of the person.

(c) It shall be the duty of the director to furnish to any person applying therefor a certificate showing the amount of all liens for motor fuel tax, penalties, and interest that may be in the files of the director against any person under the provisions of this subchapter.

History. Acts 1941, No. 383, § 18;
A.S.A. 1947, § 75-1120.

26-55-243. Delinquent tax payments — Collection procedure.

(a) If any distributor of motor fuel shall become delinquent in the payment of any tax prescribed by law on motor fuel, it shall be the duty of the Director of the Department of Finance and Administration when the tax is determined, either by the report of the distributor or by such investigations as the director may have made, to assess the tax so determined against the delinquent taxpayer, together with a penalty of twenty percent (20%) on the amount of the tax, and to certify the amount of the tax and penalty to the Treasurer of State.

(b)(1) The director also at the same time shall certify the amount of the tax and penalty to the clerk of the circuit court of the county where the tax or any part thereof accrued.

(2) It shall be the duty of the clerk to file the certificate of record and to enter the same in the circuit court for judgment and decrees under the procedure prescribed for filing transcripts of judgments by § 16-19-1011.

(c) Execution shall thereupon be issuable forthwith by the clerk of the circuit court directed to the sheriff, who shall make a levy on any property, assets, and effects of the distributor against whom the tax is assessed.

History. Acts 1941, No. 383, § 20;
A.S.A. 1947, § 75-1122.

26-55-244. Refunds on excess gallonage reported.

(a)(1) Whenever it shall appear upon the filing of the monthly report by any distributor that the distributor during the period covered by such report has sold or otherwise disposed of or used during such period, an amount of motor fuel as set forth in §§ 26-55-205, 26-55-207, 26-55-210, and 26-55-212, in excess of the amount of motor fuel received by the distributor within the State of Arkansas during the period, the distributor shall be entitled thereupon to a refund upon the excess gallonage at the rate per gallon provided in § 26-55-205 if the distributor claiming the refund has paid a tax at the rate provided in § 26-55-205 on each gallon of motor fuel in storage or in the possession of the distributor at the beginning of such reporting period.

(2) However, the Director of the Department of Finance and Administration may deduct from the refund a sum equivalent to the one percent (1%) evaporation loss claimed by the distributor in reports made prior to the reporting period.

(b) In the event any distributor shall be in default in the payment of the distributor's motor fuel tax or any penalties or interest thereunder, the refunds provided for in this section shall be reduced by the amount of the default.

(c) Whenever the director determines that any distributor is entitled to a refund under any of the provisions of this section, the director shall certify the amount of the refund and authorize and permit the distributor to deduct the same amount from the distributor's next motor fuel tax payment to the State of Arkansas.

History. Acts 1941, No. 383, § 22; 1965 (1st Ex. Sess.), No. 41, § 3; A.S.A. 1947, § 75-1124.

26-55-245. Refunds — Taxes erroneously or illegally collected — Lost fuel.

(a) In the event it appears to the Director of the Department of Finance and Administration that any taxes or penalties imposed by this subchapter have been erroneously or illegally collected from any distributor, the director shall certify the amount thereof and authorize and permit the distributor to make an equivalent deduction from the distributor's next motor fuel tax payment to the State of Arkansas.

(b) In the event any distributor sustains a loss of motor fuel due to fire, flood, storm, theft, or other causes beyond the distributor's control other than through evaporation, which product has been received as defined by § 26-55-202(13), the director shall authorize and permit the distributor to deduct the quantity so lost from the quantity subject to tax on the motor fuel tax report filed for the month in which the loss occurred or any subsequent report filed within a period of one (1) year. However, the same loss may be allowed only one (1) time.

(c)(1) Before the director shall certify or authorize any distributor to make any deduction or take any credit on its reports on account of any tax having been erroneously or illegally collected or on account of any loss as provided in subsections (a) and (b) of this section, satisfactory evidence, upon such forms and in such a manner as shall be prescribed by the Revenue Division of the Department of Finance and Administration, shall be submitted to the supervisor of the Motor Fuel Tax Section of the Department of Finance and Administration, who shall determine from the evidence if any deduction or credit is to be allowed.

(2) Thereupon the supervisor of the section shall transmit to the director his or her certificate of approval, and the director may in his or her discretion allow the deduction or credit in the amount the director thinks proper or may reject the deduction or credit altogether.

(3) Upon the approval in any amount by the director for any deduction or credit, the director shall then transmit the certificate of

approval of the supervisor of the section and his or her own to the director who himself or herself or by his or her duly authorized representative shall review the approvals for confirmation or rejection and shall certify or reject and return them to the director.

(4) The rejection or confirmation of the deduction or credit shall be final, and upon the confirmation by the director, the deduction or credit shall then be allowed in due course by the supervisor of the section.

History. Acts 1941, No. 383, § 23; 1943, No. 251, § 1; A.S.A. 1947, § 75-1125.

26-55-246. Posting price of fuel plus tax.

Distributors and all other persons selling motor fuel may add the amount of the tax to the price of the motor fuel sold by them and shall state the rate of the tax separately from the price of the motor fuel on all price display signs, in letters or figures of the same size and color, sales or delivery slips, bills, and statements which advertise or indicate the price of motor fuel.

History. Acts 1941, No. 383, § 27; A.S.A. 1947, § 75-1129.

26-55-247. Confiscation and sale of equipment of persons transporting motor fuel unlawfully.

(a) Any person who knowingly transports or causes to be transported any motor fuel in any manner in violation of the provisions of this subchapter in addition to other penalties and punishment provided for in this subchapter shall be subject to the immediate confiscation of the tank truck or vehicle and the contents therein which are thus unlawfully transported, by the Director of the Department of Finance and Administration or the director's agents.

(b) Unless the operator or owner of such tank truck or vehicle can prove to the satisfaction of the director at a hearing for that purpose within ten (10) days that such motor fuel was being transported, transferred, or delivered in accordance with this subchapter or any other act affecting the transportation of motor fuel, and in accordance with any regulations issued pursuant to this subchapter or any other act, the tank truck or vehicle and the contents therein shall be sold by the director at auction without any recourse or liability on the director or any of the director's agents or the State of Arkansas.

History. Acts 1941, No. 383, § 21; A.S.A. 1947, § 75-1123.

26-55-248. Sale of fuels purchased from other than duly licensed distributor — Penalties.

Any person who sells any motor fuel purchased by a person from any person other than a duly licensed distributor upon which the tax herein imposed shall not be paid upon conviction shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) or imprisonment in the county jail for a term of not less than thirty (30) days and not more than one (1) year, or both fine and imprisonment.

History. Acts 1941, No. 383, § 25;
A.S.A. 1947, § 75-1127.

26-55-249. Public inspection of records.

The records of the Director of the Department of Finance and Administration pertaining to motor fuel taxes shall at all reasonable times be open to the inspection of the public with the approval of the director.

History. Acts 1941, No. 383, § 24;
A.S.A. 1947, § 75-1126.

CASE NOTES**Implied Repeal.**

This section is impliedly repealed by
§ 26-18-303. *Snyder v. Martin*, 305 Ark.
128, 806 S.W.2d 358 (1991).

26-55-250. Exchange of information among states.

The Director of the Department of Finance and Administration upon request duly received from the officials to whom are intrusted the enforcement of the motor fuel tax laws of any other state shall forward to such officials any information which the director may have in his or her possession relative to the manufacture, receipt, sale, use, transportation, or shipment by any person of motor fuel.

History. Acts 1941, No. 383, § 26;
A.S.A. 1947, § 75-1128.

SUBCHAPTER 3 — REFUNDS — MOTOR FUELS USED FOR AGRICULTURAL PURPOSES**SECTION.**

26-55-301 — 26-55-321. [Repealed.]

26-55-301 — 26-55-321. [Repealed.]

Publisher's Notes. This subchapter, concerning a tax refund when motor fuel used for agricultural purposes, was repealed by Acts 1995, No. 777, § 9. The subchapter was derived from the following sources:

26-55-301. Acts 1949, No. 406, § 1; 1967, No. 181, § 1; 1969, No. 136, § 1; A.S.A. 1947, § 75-1133.

26-55-302. Acts 1949, No. 406, § 16; A.S.A. 1947, § 75-1148.

26-55-303. Acts 1949, No. 406, § 13; A.S.A. 1947, § 75-1145.

26-55-304. Acts 1949, No. 406, § 2; 1963, No. 114, § 1; A.S.A. 1947, § 75-1134.

26-55-305. Acts 1949, No. 406, §§ 4, 5, 10; 1967, No. 182, § 1; A.S.A. 1947, §§ 75-1136, 75-1137, 75-1142.

26-55-306. Acts 1949, No. 406, §§ 10, 12; A.S.A. 1947, §§ 75-1142, 75-1144.

26-55-307. Acts 1949, No. 406, §§ 5, 6; 1971, No. 165, § 1; A.S.A. 1947, §§ 75-1137, 75-1138.

26-55-308. Acts 1949, No. 406, §§ 2, 7; 1963, No. 114, § 1; A.S.A. 1947, §§ 75-1134, 75-1139.

26-55-309. Acts 1949, No. 406, § 13; A.S.A. 1947, § 75-1145.

26-55-310. Acts 1949, No. 406, § 2; 1963, No. 114, § 1; A.S.A. 1947, § 75-1134.

26-55-311. Acts 1949, No. 406, § 7; A.S.A. 1947, § 75-1139.

26-55-312. Acts 1949, No. 406, § 3; 1967, No. 183, § 1; A.S.A. 1947, § 75-1135.

26-55-313. Acts 1949, No. 406, § 9; A.S.A. 1947, § 75-1141.

26-55-314. Acts 1949, No. 406, § 10; A.S.A. 1947, § 75-1142.

26-55-315. Acts 1949, No. 406, § 8; A.S.A. 1947, § 75-1140.

26-55-316. Acts 1949, No. 406, § 11; A.S.A. 1947, § 75-1143.

26-55-317. Acts 1949, No. 406, §§ 14, 15; A.S.A. 1947, §§ 75-1146, 75-1147.

26-55-318. Acts 1949, No. 406, §§ 14, 15; A.S.A. 1947, §§ 75-1146, 75-1147.

26-55-319. Acts 1949, No. 406, § 15; A.S.A. 1947, § 75-1147.

26-55-320. Acts 1949, No. 406, § 10; A.S.A. 1947, § 75-1142.

26-55-321. Acts 1949, No. 406, § 10; A.S.A. 1947, § 75-1142.

SUBCHAPTER 4 — REFUNDS — MOTOR FUELS USED IN MOTOR BUSES**SECTION.**

26-55-401. Applicability of existing motor fuel refund laws.

26-55-402. Effect of subchapter on state highway bonds.

26-55-403. Director's powers.

26-55-404. Entitlement to refund.

SECTION.

26-55-405. Refund permits.

26-55-406. Applications for refund.

26-55-407. Refund paid from Gasoline Tax Refund Fund.

26-55-408. Dealers' and sellers' records and reports.

Effective Dates. Acts 1963, No. 269, § 9: Mar. 18, 1963. Emergency clause provided: "It is hereby found that economical mass transportation for the general public is essential to the public welfare; that the owners and/or operators of motor buses on designated streets according to regular schedules under franchises from municipalities in this state, are in dire circumstances, thereby jeopardizing the efficient and economical mass transportation of the public; and that an emergency therefore is hereby declared to exist, and this act being necessary for the preservation of

the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 600, § 6: Apr. 7, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the maintenance and operation of economical mass transportation for the general public is essential to the public welfare, that the owners and/or operators of motor buses on designated streets according to regular schedules under franchise from municipalities in this State are in dire circumstances thereby jeopardiz-

ing the efficient and economical mass transportation of the public, and that the immediate passage of this Act is necessary to provide financial relief to the operation of mass transit facilities in municipalities in this State. Therefore, an emergency is

hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

26-55-401. Applicability of existing motor fuel refund laws.

All provisions of § 26-55-301 et seq. [repealed], with respect to records of refunds, erroneous or fraudulent claims, bond requirements, revocation of permits, inspection of dealers' records, and all other provisions thereof, so far as they are adaptable, shall be equally applicable to motor fuel tax refunds pursuant to this subchapter.

History. Acts 1963, No. 269, § 6; A.S.A. 1947, § 75-1148.6.

et seq., referred to in this section, was repealed by Acts 1995, No. 777, § 9.

Publisher's Notes. Section 26-55-301

26-55-402. Effect of subchapter on state highway bonds.

Nothing in this subchapter shall be construed as an impairment of the obligation existing between the State of Arkansas and the holders of Arkansas state highway bonds whether the bonds have already been issued or may hereafter be issued.

History. Acts 1963, No. 269, § 8; A.S.A. 1947, § 75-1148.8.

26-55-403. Director's powers.

The Director of the Department of Finance and Administration shall have the authority to make, amend, and enforce regulations, to subpoena witnesses and documents, to administer oaths, and to do and perform all other acts the director shall deem necessary to carry out the purpose and intent of this subchapter.

History. Acts 1963, No. 269, § 7; A.S.A. 1947, § 75-1148.7.

26-55-404. Entitlement to refund.

The owners or operators of motor buses operated on designated streets according to regular schedules, under municipal franchise, who for the purpose of operating the buses shall use motor fuel on which the tax, as imposed by the Motor Fuel Tax Law, § 26-55-201 et seq., has been paid or hereafter shall be paid, shall be entitled to a refund of the full amount of the motor fuel tax, subject to the provisions of this subchapter.

History. Acts 1963, No. 269, § 1; 1971, No. 600, § 1; A.S.A. 1947, § 75-1148.1.

26-55-405. Refund permits.

(a) No person, firm, or corporation shall secure a refund of tax under this subchapter unless that person is the holder of an unrevoked permit issued by the Director of the Department of Finance and Administration before the purchase of the motor fuel.

(b) The permit shall be numbered and issued annually and shall entitle the holder to make application for refund under this subchapter.

(c) Applications for the permits shall be filed with the director on forms prescribed by the director and shall contain the same information, so far as applicable, as is required in § 26-55-305 [repealed], and such other information as the director may require.

History. Acts 1963, No. 269, § 4; A.S.A. 1947, § 75-1148.4.

ferred to in this section was repealed by Acts 1995, No. 777, § 9.

A.C.R.C. Notes. Section 26-55-305 re-

26-55-406. Applications for refund.

Applications for refund pursuant to this subchapter shall be sworn to and shall be made to the Director of the Department of Finance and Administration and shall be in the same form and contain the same information, so far as applicable, as is required in § 26-55-301 et seq. [repealed], and in addition, shall contain such other information as may be required by the director.

History. Acts 1963, No. 269, § 2; A.S.A. 1947, § 75-1148.2.

seq., referred to in this section, was repealed by Acts 1995, No. 777, § 9.

A.C.R.C. Notes. Section 26-55-301 et

26-55-407. Refund paid from Gasoline Tax Refund Fund.

All valid claims for refund of motor fuel taxes under the provisions of this subchapter shall be paid from the Gasoline Tax Refund Fund and shall be subject to the same conditions and limitations as provided in § 26-55-301 et seq. [repealed], with respect to agricultural motor fuel tax refunds, except that all such motor fuels covered by the provisions of this subchapter shall be subject to the full refund of the motor fuel taxes paid thereon.

History. Acts 1963, No. 269, § 3; 1971, No. 600, § 2; A.S.A. 1947, § 75-1148.3.

seq., referred to in this section, was repealed by Acts 1995, No. 777, § 9.

A.C.R.C. Notes. Section 26-55-301 et

26-55-408. Dealers' and sellers' records and reports.

Dealers and sellers of motor fuel shall keep the same records and shall prepare the same invoices and make the same reports to the Director of the Department of Finance and Administration with respect

to motor fuel sold to permit holders under this subchapter as is required by § 26-55-301 et seq. [repealed], with respect to agricultural motor fuel sales.

History. Acts 1963, No. 269, § 5; A.S.A. 1947, § 75-1148.5.

A.C.R.C. Notes. Section 26-55-301 et

seq., referred to in this section, was repealed by Acts 1995, No. 777, § 9.

SUBCHAPTER 5 — INTERSTATE MOTOR FUELS DEALERS

SECTION.

26-55-501 — 26-55-511. [Repealed.]

26-55-501 — 26-55-511. [Repealed.]

Publisher's Notes. This subchapter, concerning interstate motor fuels dealers, was repealed by Acts 1995, No. 777, § 2. The subchapter was derived from the following sources:

26-55-501. Acts 1968 (1st Ex. Sess.), No. 36, § 1; A.S.A. 1947, § 75-1180.

26-55-502. Acts 1968 (1st Ex. Sess.), No. 36, § 1; A.S.A. 1947, § 75-1180.

26-55-503. Acts 1968 (1st Ex. Sess.), No. 36, § 2; A.S.A. 1947, § 75-1181.

26-55-504. Acts 1968 (1st Ex. Sess.), No. 36, § 4; A.S.A. 1947, § 75-1183.

26-55-505. Acts 1968 (1st Ex. Sess.), No. 36, § 3; A.S.A. 1947, § 75-1182.

26-55-506. Acts 1968 (1st Ex. Sess.), No. 36, § 4; A.S.A. 1947, § 75-1183.

26-55-507. Acts 1968 (1st Ex. Sess.), No. 36, § 4; A.S.A. 1947, § 75-1183.

26-55-508. Acts 1968 (1st Ex. Sess.), No. 36, § 4; A.S.A. 1947, § 75-1183.

26-55-509. Acts 1968 (1st Ex. Sess.), No. 36, § 2; A.S.A. 1947, § 75-1181.

26-55-510. Acts 1968 (1st Ex. Sess.), No. 36, § 5; A.S.A. 1947, § 75-1184.

26-55-511. Acts 1968 (1st Ex. Sess.), No. 36, § 7; A.S.A. 1947, § 75-1185.

SUBCHAPTER 6 — SHIPMENTS OF MOTOR FUELS

SECTION.

26-55-601. Definitions.

26-55-602. Applicability.

26-55-603. Penalties — Impoundment of vehicles.

26-55-604. Rules and regulations — Audit assistance.

26-55-605. Import/export load permit required — Exception.

26-55-606. Bill of lading required — Penalty.

SECTION.

26-55-607. Documentation to be retained in vehicle — Exception.

26-55-608. Authority to stop, investigate, and impound vehicles.

26-55-609. Responsibility for taxes — Provisions cumulative.

26-55-610. Licensing and bonding requirements — Penalties.

Publisher's Notes. Acts 1977, No. 224, as amended, concerning shipments of motor fuels, was included in the 1987 codification of the Arkansas Code as subchapter 6 of this chapter. However, the codification of Acts 1977, No. 224, as amended, never became effective because Acts 1977, No. 224, as amended, was repealed by Acts

1987, No. 977, § 12, before the effective date of the 1987 codification.

Cross References. Special motor fuels taxes, § 26-56-101 et seq.

Effective Dates. Acts 1987, No. 977, § 13: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly

that abuses of the 'Motor Fuel Tax Law,' as amended, and 'Special Motor Fuels Tax Law,' as amended, exist which result in substantial loss of revenues to the State; and that this Act is immediately necessary to strengthen the enforcement provisions governing the transportation of fuels. Therefore, an emergency is hereby declared to exist and that this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987."

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby

found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-55-601. Definitions.

As used in this subchapter:

(1) "Director" means the Director of State Highways and Transportation;

(2) "Fuels" means motor fuel, distillate special fuels, and liquefied gas special fuels, as defined in the Motor Fuel Tax Law, § 26-55-201 et seq., and the Special Motor Fuels Tax Law, § 26-56-101 et seq., and includes gasoline, diesel fuel, and liquefied petroleum gas fuels used to propel an automotive vehicle;

(3) "Person" includes any operator, individual, owner, company, partnership, limited liability company, joint venture, joint agreement, association, whether mutual or otherwise, corporation, estate, trust, business trust, receiver, trustee, leasing company, common carrier, private carrier, or transporter; and

(4) "River ports" means those ports where fuels transported by barge are unloaded.

History. Acts 1987, No. 977, § 1; 1995, No. 1160, § 27.

26-55-602. Applicability.

The provisions of this subchapter shall not be applicable to any licensed distributor or supplier of fuels within this state who does not import or export fuels.

History. Acts 1987, No. 977, § 11.

26-55-603. Penalties — Impoundment of vehicles.

(a) Any person transporting fuels into the State of Arkansas without the appropriate bill of lading and import/export load permit or interstate shipment record as required by this subchapter shall be guilty of a misdemeanor and shall be fined not more than two thousand five

hundred dollars (\$2,500), of which one-half (½) shall be deposited with the Treasurer of State as special highway revenues to be disbursed in the same manner and to be used for the same purposes as is set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

(b) Any person who shall make, or assist any other person to make, any false or fraudulent statement in any report required by this subchapter or the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq., or who shall fail to include any information demanded by this subchapter or the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq., or who shall fail to produce upon request of proper authority any information required in this subchapter or the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq., shall be guilty of a misdemeanor and subject to the penalties as provided in this section.

(c) Any motor vehicle, including the cargo thereof, found to have been in violation of any of the provisions of this section shall be impounded by the Director of State Highways and Transportation pending disposition under this subchapter.

History. Acts 1987, No. 977, § 8.

26-55-604. Rules and regulations — Audit assistance.

The Director of State Highways and Transportation shall prescribe and promulgate rules and regulations necessary for the proper enforcement of this subchapter with the advice of the Legislative Council, and in any audits conducted by the Arkansas State Highway and Transportation Department relating to the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq., or this subchapter or other pertinent laws, may call upon the Director of the Department of Finance and Administration for assistance.

History. Acts 1987, No. 977, § 10.

26-55-605. Import/export load permit required — Exception.

(a) No person shall import or export fuels into or out of this state, other than by pipeline or rail, for sale or use within this state without:

(1) Being a supplier or distributor, licensed by the Director of the Department of Finance and Administration under the laws of the State of Arkansas, as those terms are defined in the Motor Fuel Tax Law, § 26-55-201 et seq., and the Special Motor Fuels Tax Law, § 26-56-101 et seq.; and

(2) Acquiring an import/export load permit issued by the Director of State Highways and Transportation or his or her designee for each load.

(b)(1) No common carrier pipeline company shall import or export fuels by pipeline without filing a copy of all reports, required by other laws of this state, with the Director of State Highways and Transportation.

(2) Railroad companies are exempt from the provisions of this subchapter except in those cases where the railroad company is importing fuels for other than off-road usage or for sale to licensed suppliers or distributors.

(c)(1) The Director of State Highways and Transportation or his or her designee shall issue import/export load permits at no charge and on those forms provided by the Director of State Highways and Transportation and in the manner provided by the Director of State Highways and Transportation.

(2) The Director of State Highways and Transportation shall provide a toll-free telephone number for both interstate and intrastate usage for those seeking the permits.

(3)(A) The Director of State Highways and Transportation shall prescribe and publish such rules and regulations as may be necessary for the enforcement of this subchapter.

(B) The regulations shall provide that a licensed supplier or distributor upon demand may obtain a supply of prenumbered permits for use as required under this subchapter so long as the supplier or distributor has not been found in violation of this subchapter. However, each permit used must be accompanied by the relevant bill of lading when filed with the Director of State Highways and Transportation.

(d) The Director of State Highways and Transportation shall have the authority to station one (1) or more representatives at each port of entry or pipeline terminal to assist in the enforcement of this subchapter.

(e) The import/export load permit shall be on a form issued by the Director of State Highways and Transportation.

History. Acts 1987, No. 977, §§ 2, 3.

26-55-606. Bill of lading required — Penalty.

(a) All shipments or movements of fuels, except by pipeline or rail, for sale or use without, or when imported for sale or use within, the state shall be accompanied by a bill of lading which shall show the following:

(1) The seller's or the purchaser's supplier or distributor license number;

(2) The origin of the transport trip;

(3) The approximate destination or destinations of the transport trip;

(4) The type or types of fuels being transported and quantity or quantities of fuels to be delivered to each destination;

(5) The person or persons responsible for the payment of the fuels tax; and

(6) Such other information or forms as the Director of State Highways and Transportation by regulation may adopt or require to implement the intent of this subchapter.

(b)(1) Any transporter of fuels by any means, except by pipeline or rail, shall be required to produce a copy of the bill of lading containing the information required by this section and a copy of the permit, if required by § 26-55-605, for inspection by any enforcement officer within the State of Arkansas.

(2) Any failure to have the bill of lading and a copy of the permit in the vehicle, or to produce it as prescribed, shall be an offense punishable as set forth in § 26-55-603.

(c) The bill of lading required by this section may be on the transporter's own form, but shall contain the information set out above.

History. Acts 1987, No. 977, § 3.

26-55-607. Documentation to be retained in vehicle — Exception.

(a)(1) All transporters of fuels shall be responsible for retaining and safeguarding in their possession a clear and legible copy of all documentation required by this subchapter covering the cargo being transported.

(2) If transportation is by motor vehicle, the responsibility for the retention and safeguarding shall commence at the time the driver of the vehicle enters the boundaries of the State of Arkansas or assumes responsibility for the transport of the cargo which shall continue unabated until that point at which the driver of the vehicle's responsibility for the transport of the cargo is terminated.

(3) In all cases of highway transport by motor vehicle, the copy of the bill of lading and import/export load permit shall be retained in the cab of the vehicle during the period of the operator's responsibility.

(b) Fuels transported in interstate commerce through Arkansas, the origin of which is outside of Arkansas and destination of which is outside of Arkansas, shall be exempt from the import/export load permit requirements of § 26-55-605.

History. Acts 1987, No. 977, § 4.

26-55-608. Authority to stop, investigate, and impound vehicles.

(a) In order to enforce the provisions of this subchapter, any officer of the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department shall have the authority to stop any vehicle appearing to be handling or transporting fuels for the purpose of examining the documents required by this subchapter or to ensure the operator's compliance with its provisions.

(b) If after the examination or investigation it is determined that the transporter should have secured an import/export load permit as required by this subchapter, but has failed to secure that permit, the enforcement officer shall immediately cause the offending vehicle and its operator to be removed to the nearest Arkansas State Highway and Transportation Department property, port of entry, or any designated

location where the Director of the Department of Finance and Administration's representative shall immediately assess the tax on that load together with the penalty provided in § 26-55-609 against the person found to be responsible for the payment of the tax.

(c) Notice upon the person shall be effectuated by delivering written notice of the assessment to the operator of the vehicle at that time.

(d) The Director of State Highways and Transportation or his or her representative shall be authorized to impound any vehicle and refuse authority to travel on Arkansas highways to any vehicle which, previous to the entry into this state, has not complied with all requirements of this subchapter.

(e) Further, travel shall not be authorized until the criminal fines or bonds have been posted and the taxes and penalties paid in full.

History. Acts 1987, No. 977, §§ 5, 6.

26-55-609. Responsibility for taxes — Provisions cumulative.

(a) Any person who shall violate any provision of this subchapter shall be immediately responsible for the taxes, as imposed by this state, on the fuels involved in the violation plus twenty percent (20%) as a penalty.

(b) All fines and penalties imposed pursuant to this subchapter shall be in addition to any and all penalties imposed pursuant to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1987, No. 977, § 7.

26-55-610. Licensing and bonding requirements — Penalties.

(a)(1) Each domestic refiner, importer, exporter, supplier, or distributor taking possession of fuels within the State of Arkansas for delivery without the state shall be licensed and bonded by the Motor Fuel Tax Section of the Department of Finance and Administration.

(2) Failure to obtain a license as required by the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq., or other pertinent law, shall constitute a violation of that law and any such person shall be subject to the penalties set forth in § 26-55-603.

(b)(1) Each domestic refiner, importer, exporter, supplier, or distributor taking possession of fuels within this state shall include the license number of each licensed distributor or special fuels supplier on each cargo manifest, bill of lading, delivery ticket, or other document.

(2) The failure to so include the license number shall constitute a violation of this subchapter and shall be punishable in accordance with the provisions of § 26-55-603.

(c) Persons taking delivery at river ports, as defined in § 26-55-601, shall have the responsibility of complying with all the provisions of this subchapter and are subject to the applicable penalties.

(d) Domestic refiners, importers, exporters, suppliers, or distributors of fuels and other accounts acquiring fuels from without the state for delivery within the state shall be licensed pursuant to the laws of this state and subject to all provisions contained in this subchapter and are subject to the applicable penalties and fines set out by § 26-55-603.

History. Acts 1987, No. 977, § 9.

SUBCHAPTER 7 — FUEL IMPORTED IN SUPPLY TANKS

SECTION.

- 26-55-701. Purpose of tax.
- 26-55-702. Liability for tax.
- 26-55-703. Exemptions.
- 26-55-704. Allocation and distribution of tax.
- 26-55-705. License required — Application.
- 26-55-706. Bond of applicant.
- 26-55-707. License — Issuance — Terms and conditions.
- 26-55-708. Registration of licensee's motor vehicles.
- 26-55-709. Interstate carrier certificates or permits.
- 26-55-710. Quarterly mileage reports — Tax computation.
- 26-55-711. Bonded and unbonded interstate motor fuel users — Penalty for insufficient purchase.

SECTION.

- 26-55-712. Bonded and unbonded interstate users — Knowing and intentional failure to pay tax or penalty.
- 26-55-713. Claims for refunds by non-bonded users.
- 26-55-714. Interstate users — Tax refund procedure.
- 26-55-715. [Repealed.]
- 26-55-716. Failure or refusal to pay tax — Penalties, interest, and costs.
- 26-55-717. Unlicensed users — Failure to pay tax — Burden of proof.
- 26-55-718. Failure to file report or pay tax, filing fraudulent reports, etc. — Penalties.
- 26-55-719. Records — Preservation — Inspection.

Cross References. Interstate users, tax refunds, credit, or assessment, § 26-56-214.

Effective Dates. Acts 1953, No. 112, § 13: July 1, 1953.

Acts 1957, No. 213, § 5: Mar. 12, 1957. Emergency clause provided: "An emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, it shall be effective and in full force from and after the passage and approval of this Act."

Acts 1967, No. 356, § 7: Mar. 15, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State levying a tax upon gasoline and prescribing the procedure for collecting the same are confusing and difficult of enforcement and that this Act is immediately necessary to clarify the laws levying the gasoline tax in

order that said tax may be more effectively and efficiently enforced. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

Acts 1967, No. 376, §§ 6, 9: July 1, 1967. Emergency clause provided: "It has been found and declared by the General Assembly that confusion and disagreement exists as to the Administrative Procedure pertaining to Motor Fuel Tax Laws of this State which causes unnecessary expense in such administration, and this Act is necessary to correct and clarify such procedure, and it is necessary to eliminate unnecessary expenditures in the administration of the Motor Fuel Tax Laws of this State. Therefore an emergency is declared to exist, and this Act being necessary for the preservation of the public peace,

health and safety, shall take effect and be in force from and after the date of its approval." Approved Mar. 15, 1967.

Acts 1968 (1st Ex. Sess.), No. 64, § 3: Feb. 27, 1968. Emergency clause provided: "It has been found and determined by the General Assembly that current legislation permits revenues from Motor Fuel Tax Forms to be dedicated for the benefit of the collecting agency and this procedure is contrary to the generally accepted principals [principles] of funding State agencies from the Constitutional and Fiscal Agencies Fund Account; therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1977, No. 51, § 5: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1977 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1977 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1977."

Acts 1977, No. 354, § 5: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in need of additional funds for the construction and maintenance of the State Highway System, the county roads, and municipal streets of this State; that the present laws governing the rate of tax to be computed upon the use of highways in this State with respect to the class of motor carriers covered by the provisions of this Act, do not adequately apportion to each class of user a mileage factor reasonably approximating the actual miles per gallon of fuel used in this State, and that

by the enactment of this Act the State of Arkansas will obtain its fair and reasonable share of taxes due from said classes of motor carriers at the existing rates of tax, and will also gain the benefits of penalty for failure of motor carriers to comply with the motor fuel and distillate motor fuel tax laws in reporting and paying taxes upon which Arkansas motor fuel or distillate special fuel taxes have not been collected, and that the immediate passage of this Act is necessary to correct this situation. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1977."

Acts 1979, No. 434, § 5: effective upon issuance of 1980 markings.

Acts 1987, No. 803, § 14: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that this Act makes various changes in the motor fuel tax law and the special motor fuel tax law; that such changes should go into effect at the beginning of the next fiscal year; and that unless this emergency clause is adopted, this Act may not go into effect until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1987."

Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full

force and effect on and after the first day of the first month immediately following its passage and approval.”

Acts 1991, No. 928, § 6: Mar. 29, 1991. Emergency clause provided: “It is hereby found and determined by the 78th General Assembly that the imposition of a fee for the issuance of bonded interstate fuel user decals is inappropriate and that it is in the best interests of the highway-users of this state that such fee no longer be collected. Therefore, an emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect on and after its passage and approval.”

Acts 1995, No. 777, § 13: July 1, 1995. Emergency clause provided: “It is found and determined by the Eightieth General Assembly of the State of Arkansas that

current laws allowing for a refund of tax paid on gasoline used for agricultural purposes is an inefficient and impractical method of providing tax relief to farmers; that current laws collecting motor fuel tax on liquefied petroleum gas based upon a flat fee is inequitable and imposes an undue burden on some taxpayers in this State; that current licensing and bonding requirements on motor fuel and distillate special fuel dealers are unnecessary and contrary to federal law; that this bill is designed to correct each of these deficiencies in current law and this Act should be effective on July 1, 1995. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect on and after July 1, 1995.”

26-55-701. Purpose of tax.

The tax imposed by this subchapter is levied for the purpose of providing revenue to be used by the State of Arkansas to defray the expenses of the administration of this subchapter and for the purpose of construction, reconstruction, maintenance, and repair of roads, highways, and bridges, and for the payment of obligations incurred for these purposes.

History. Acts 1953, No. 112, § 1; A.S.A. 1947, § 75-1149.

26-55-702. Liability for tax.

Any person, firm, or corporation that operates on the highways of this state any motor carrier, bus, truck, transport, or other motor vehicle, having a gross loaded weight of twenty-six thousand one pounds (26,001 lbs.) or more, and having motor fuel commonly or commercially sold and used as gasoline as defined in § 26-55-202 in its fuel tank or tanks, upon which the Arkansas motor fuel tax has not been paid, shall be liable for a tax at the rate per gallon provided in § 26-55-205 on all such gasoline used or consumed in the State of Arkansas, subject to the provisions of §§ 26-55-710 and 26-55-715 [repealed].

History. Acts 1953, No. 112, § 2; 1965 (1st Ex. Sess.), No. 41, § 4; 1967, No. 356, § 1; A.S.A. 1947, § 75-1150; Acts 1993, No. 618, § 8.

Publisher's Notes. Section 26-55-715 referred to in this section was repealed by Acts 1987, No. 803, § 10.

CASE NOTES

ANALYSIS

Construction.
Classification.

Construction.

Acts 1941, No. 383, § 6; 1943, No. 188, § 1, were not in conflict with § 26-55-205, which levies a tax on all motor fuel sold or used in the state or purchased for sale or use in the state. *McLeod v. Santa Fe Trail Transp. Co.*, 205 Ark. 225, 168 S.W.2d 413 (1943) (decision under prior law).

Classification.

Classification of motor carriers, motor buses, and other motor vehicles operated

for hire as opposed to all other motor vehicles was not an arbitrary classification. *McLeod v. Santa Fe Trail Transp. Co.*, 205 Ark. 225, 168 S.W.2d 413 (1943) (decision under prior law).

In alternate or optional methods of determining calculation of tax allowed to operators of motor carriers, motor buses, and other motor vehicles operated for hire, provided they operate on a regular schedule, provision as to operation on regular schedule, as opposed to not operating on a regular schedule, was a fair classification. *McLeod v. Santa Fe Trail Transp. Co.*, 205 Ark. 225, 168 S.W.2d 413 (1943) (decision under prior law).

26-55-703. Exemptions.

The tax levied by this subchapter shall not apply to gasoline imported into this state in the fuel supply tanks, including any additional containers, of motor vehicles being used solely for noncommercial purposes if the aggregate capacity of the fuel supply tanks, including any additional containers, does not exceed thirty gallons (30 gals.).

History. Acts 1953, No. 112, § 2; 1965 (1st Ex. Sess.), No. 41, § 4; 1967, No. 356, § 1; A.S.A. 1947, § 75-1150.

CASE NOTES

Applicability.

Twenty-gallon exemption applied only when the motor fuel was actually measured at the port of entry and actually measured at the port of exit, and it did not

apply when the alternate or optional method of determining the tax was used by the operator. *McLeod v. Santa Fe Trail Transp. Co.*, 205 Ark. 225, 168 S.W.2d 413 (1943) (decision under prior law).

26-55-704. Allocation and distribution of tax.

The funds collected under this subchapter shall be allocated and distributed only in the manner established by the laws relating to motor fuel taxes.

History. Acts 1953, No. 112, § 1; A.S.A. 1947, § 75-1149.

26-55-705. License required — Application.

(a) Before any person, firm, or corporation subject to § 26-55-702 imports for use on the highways of this state gasoline in the fuel supply tanks of any motor vehicle, or in any other container, with a gross loaded weight of twenty-six thousand one pounds (26,001 lbs.) or more,

such person shall file application for and obtain a license from the Director of the Department of Finance and Administration.

(b) The application required by this section shall be verified by affidavit and filed on a form prescribed and furnished by the director, stating the name, address, kind of business of the applicant, the applicant's principal place of business, and such other relevant information as the director may require.

(c) The applications must also contain, as a condition to the issuance of the license, an agreement by the applicant to comply with the requirements of the subchapter and the lawful rules and regulations of the director.

History. Acts 1953, No. 112, § 3; A.S.A. 1947, § 75-1151; Acts 1993, No. 618, § 9.

26-55-706. Bond of applicant.

(a) Before any license application shall be approved by the Director of the Department of Finance and Administration, the applicant shall file a bond, with surety satisfactory to the director, payable to the State of Arkansas and conditioned upon the applicant's compliance with the provisions of this subchapter and the rules and regulations of the director.

(b)(1) The bond shall be in the sum of not less than five hundred dollars (\$500) and not more than twenty thousand dollars (\$20,000), the amount to be fixed in each case by the director.

(2) However, the amount of any bond may be increased or decreased within the foregoing limits by the director at any time.

(c) No bond shall be cancelled by the surety thereon until the expiration of sixty (60) days after receipt of notice of the cancellation by the director, and the cancellation shall have no retroactive effect.

History. Acts 1953, No. 112, § 4; A.S.A. 1947, § 75-1152.

26-55-707. License — Issuance — Terms and conditions.

(a) Upon approval of the application and bond, the Director of the Department of Finance and Administration shall issue to the applicant a nontransferable fuel user's license bearing a distinctive number, to remain in full force until surrendered, suspended, or cancelled in the manner provided in this subchapter.

(b) Each license shall be valid only for the operation of motor vehicles on the highways of this state by the person to whom it is issued, including motor vehicles transporting persons or property in furtherance of the business of the licensee under a lease, a contract, or any other arrangement, whether permanent or temporary in nature.

History. Acts 1953, No. 112, § 5; A.S.A. 1947, § 75-1153.

26-55-708. Registration of licensee's motor vehicles.

(a)(1) Before any motor vehicle with a gross loaded weight of twenty-six thousand one pounds (26,001 lbs.) or more is operated on the public highways of this state, the operation of which is subject to the tax levied by this subchapter, the Director of the Department of Finance and Administration shall issue to each permitted gasoline, diesel, and liquefied petroleum gas user a distinctive marking to be prominently displayed on the passenger door of each vehicle traveling the public highways within this state.

(2) This marking shall be a nontransferable marking which shall be renewed on an annual basis.

(b) Applications for gasoline, diesel, and liquefied petroleum gas users' permits must be on a form prescribed and furnished by the director, to include such relevant information as deemed necessary by the director, for the proper administration of this subchapter.

(c) The director shall maintain a record of the quantity of markings issued each permitted user.

History. Acts 1953, No. 112, § 6; 1979, No. 434, § 1; A.S.A. 1947, § 75-1154; Acts 1991, No. 928, § 1; 1993, No. 618, § 10.

CASE NOTES

Cited: Smith v. American Trucking Ass'n, 300 Ark. 594, 781 S.W.2d 3 (1989).

26-55-709. Interstate carrier certificates or permits.

When the Arkansas State Highway and Transportation Department receives an application for an interstate carrier certificate or permit, with the appropriate fees for such certificate or permit, and also receives an application for a fuel user permit from that same applicant, the Arkansas State Highway and Transportation Department shall deliver the application for a fuel user permit to the Motor Fuel Tax Section of the Department of Finance and Administration for issuance of the fuel user permit.

History. Acts 1979, No. 434, § 2; A.S.A. 1947, § 75-1154.1; Acts 1991, No. 928, § 2.

26-55-710. Quarterly mileage reports — Tax computation.

(a)(1) Every person, firm, or corporation licensed under this subchapter on or before the last day of the month following the end of each calendar quarter shall file with the Director of the Department of Finance and Administration, on forms prescribed by the director, a report showing the quantities of gasoline purchased and used in this

state during the preceding calendar quarter, together with payment of the tax due thereon.

(2) The number of gallons of motor fuel upon which the tax has been paid by an interstate user shall be determined from the form obtained by the interstate user from a licensed dealer or licensed bulk distributor within the state. This form must contain the information required by § 26-56-209.

(b) If it shall be determined by the quarterly reports filed with the director that the interstate user has used more gallons of gasoline in this state than the gasoline tax due thereon has been paid, the interstate user shall remit to the director an excise tax of eighteen and one-half cents ($18\frac{1}{2}\text{¢}$) per gallon on the gasoline.

(c) Interstate users may not take credit on reports at a tax rate in excess of that actually paid.

(d)(1) For the purpose of determining whether a licensed interstate user owes tax or is entitled to a credit or refund, the licensed interstate user shall determine the average miles per gallon of fuel used. The average miles per gallon shall be determined by dividing the total miles traveled in all jurisdictions by the total gallons of fuel used in all jurisdictions.

(2) The licensed interstate user shall then determine the total amount of fuel used within the State of Arkansas by dividing the total number of miles traveled within the State of Arkansas by the average miles per gallon.

(3) The taxpayer's tax liability shall be calculated by multiplying the number of gallons of fuel used within the State of Arkansas by eighteen and one-half cents ($18\frac{1}{2}\text{¢}$) per gallon. A taxpayer shall be entitled to credits against his or her tax liability for tax-paid fuel purchased within the State of Arkansas.

(e) For any licensed interstate user who fails to maintain adequate mileage or fuel records as required by § 26-55-719 for the purpose of determining the amount the interstate user owes the State of Arkansas for tax on motor fuel used in this state as provided in this section, the number of gallons of motor fuel used in this state shall be determined by an assessment based on the following mileage factors per gallon of motor fuel as compared to the appropriate class of vehicle set out in subsection (f) of this section.

(f)(1) For the purposes of this section:

(A) All automobiles, except buses, with a capacity of less than eight (8) passengers shall be deemed to be Class A vehicles;

(B) All truck-type vehicles, except buses, with a factory rating and gross loaded weight of less than twenty-two thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class B vehicles;

(C) All other vehicles, except buses, with a factory rating in excess of twenty-two thousand five hundred pounds (22,500 lbs.), or whose total gross loaded weight exceeds twenty-two thousand five hundred pounds (22,500 lbs.), shall be deemed to be Class C vehicles; and

(D) All buses rated and licensed as such shall be deemed to be Class D vehicles.

(2) The mileage factor per gallon of motor fuel for:

- (A) Class A vehicles shall be twelve (12) miles;
- (B) Class B vehicles shall be eight (8) miles;
- (C) Class C vehicles shall be five (5) miles; and
- (D) Class D vehicles shall be six (6) miles.

(3) These mileage factors shall be utilized in conjunction with the Arkansas mileage as determined through an audit and based upon the best records available regardless of source.

(g)(1) For the purposes of determining the amount any unlicensed or unbonded user owes the State of Arkansas for tax on motor fuel used in this state, only the above mileage factors per gallon of motor fuel for the applicable vehicle shall be utilized.

(2) If a quarterly report of an interstate user results in a net credit, the interstate user may elect to have the credit carried forward and applied against the motor fuel tax due for the succeeding eight (8) quarters or until the credit is completely used, whichever occurs first. In the alternative, a taxpayer who is entitled to a net credit on his or her quarterly fuel use tax report may elect to have the amount of credit refunded to him or her.

(3) An interstate user who had a total tax liability for motor fuel taxes during the previous calendar year of less than one hundred dollars (\$100) upon application to the director may obtain permission to report the interstate user's motor fuel tax liability on an annual basis. The annual report shall be due on or before the last day of the month following the end of each fiscal year.

(h) The director shall prescribe the appropriate forms necessary for the administration of this subchapter. The director may make appropriate rules and regulations necessary to ensure the accurate reporting of mileage traveled and gallons used and purchased by the licensed interstate users.

History. Acts 1953, No. 112, § 7; 1957, No. 213, § 3; 1967, No. 356, § 2; 1968 (1st Ex. Sess.), No. 36, § 6; 1977, No. 354, § 1; 1979, No. 764, § 1; A.S.A. 1947, §§ 75-1155, 75-1187; Acts 1987, No. 803, § 1; 1991, No. 364, § 2; 1991, No. 382, § 2; 1995, No. 777, § 3.

A.C.R.C. Notes. Acts 1991, No. 364, § 5 as amended by identical Acts 1991, Nos. 1040 and 1239, §§ 5 and 6, and Acts 1991, No. 382, § 5, as amended by Acts 1991, Nos. 1040 and 1239, §§ 7 and 8, provided:

“(a) All of the additional taxes, fees, penalties and interest collected under the provisions of this subchapter and §§ 26-55-710, 26-56-214, and 26-56-304 shall be classified as special revenues and shall be deposited in the State Treasury. After deducting therefrom the amount to be credited to the Constitutional Officers Fund

and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

“(A) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

“(B) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

“Seventy percent (70%) of the amount thereof to a special account in the State Highway and Transportation Department Fund to be designated the ‘1991 Highway Construction and Maintenance Account’.

“(b) The funds in the 1991 Highway Construction and Maintenance Account shall be held, managed, and used in the same manner and for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et

seq., excluding, however, § 27-70-206;

“(c) Provided that, in keeping with the spirit of section 105 of Public Law 97-424 and the Arkansas State Highway Commission’s goals for encouraging the participation of disadvantaged business enterprises in entering into and performing contracts with the commission, including the purchasing of supplies and equipment

by the commission and for the construction, reconstruction, and maintenance of highways and bridges in the state highway system, the Arkansas State Highway Commission is authorized to expend up to ten percent (10%) of the total funds and revenues available and disbursed to the commission pursuant to this section for the purposes of achieving those goals.”

26-55-711. Bonded and unbonded interstate motor fuel users — Penalty for insufficient purchase.

Any motor fuel user who is a bonded or unbonded interstate motor fuel user as defined in § 26-55-710 who, upon arriving at a point of exit from this state, has failed to purchase sufficient gallons of motor fuel in this state and pay the tax as required by law as provided in this subchapter, calculated at the rate of four miles per gallon (4 MPG) for each mile traveled in this state, shall:

(1) If an unbonded motor fuel user, pay a penalty of four cents (4¢) per gallon on each gallon of fuel which he or she failed to buy in this state, in addition to paying the tax on the fuel at the point of exit from this state upon which the tax has not been paid; and

(2) If a bonded motor fuel user, pay a penalty of four cents (4¢) per gallon of the total number of gallons of fuel which he or she failed to buy in this state during each report period, in addition to paying the tax upon the fuel upon which tax has not been paid.

History. Acts 1977, No. 354, § 2; A.S.A. 1947, § 75-1187.1.

§ 4, provided in part that the act would be supplemental to the Motor Fuel Tax Law,

Publisher’s Notes. Acts 1977, No. 354, § 26-55-201 et seq.

26-55-712. Bonded and unbonded interstate users — Knowing and intentional failure to pay tax or penalty.

Any bonded or unbonded motor fuel user who knowingly and intentionally fails to pay the Arkansas gallonage tax due the State of Arkansas on motor fuel used on the highways of this state as required in § 26-55-710 with respect to motor fuel taxes on Class C vehicles, or knowingly and intentionally fails to pay the penalty on the fuel on which the Arkansas motor fuel tax has not been paid as required in § 26-55-711 shall be guilty of a Class A misdemeanor and upon conviction shall be punished in the manner provided by law.

History. Acts 1977, No. 354, § 3; A.S.A. 1947, § 75-1187.2.

§ 4, provided in part that the act would be supplemental to the Motor Fuel Tax Law,

Publisher’s Notes. Acts 1977, No. 354, § 26-55-201 et seq.

26-55-713. Claims for refunds by nonbonded users.

(a) Claims for refunds of motor fuel taxes by nonbonded users of motor fuel or claims for credits for motor fuel taxes shall not be valid unless properly presented upon motor fuel tax forms as promulgated by and as required by the Director of the Department of Finance and Administration.

(b)(1) The director may assess and charge a fee upon all forms furnished by the Revenue Division of the Department of Finance and Administration when those forms pertain to the motor fuel tax laws of this state.

(2) The fees shall be based on the cost of the forms and moneys expended for postage, processing, and handling of the forms.

(3) The fees derived from motor fuel tax forms shall be deposited into the State Treasury as special revenues, there to be distributed monthly by the Treasurer of State to the Constitutional Officer's Fund and the State Central Services Fund.

(c) The director shall not furnish forms for cash refunds or credits for motor fuel taxes to nonbonded users of motor fuel unless and until the General Assembly provides by law for the issuance of credits and cash refunds to nonbonded users of motor fuel who qualify for such credits or cash refunds or motor fuel taxes.

(d) Motor fuel users may not claim a credit for motor fuel taxes beyond the date of the next successive report after the period in which the credit arose.

History. Acts 1967, No. 376, §§ 1-5;
1968 (1st Ex. Sess.), No. 64, § 1; A.S.A.
1947, §§ 75-1175 — 75-1179.

26-55-714. Interstate users — Tax refund procedure.

(a)(1) The Director of the Department of Finance and Administration shall quarterly determine the amount estimated to be necessary to pay refunds to interstate users of motor fuels who are entitled to refunds with respect to a portion of the motor fuel taxes paid in this state as authorized in § 26-55-710, and upon certification by the director, the Treasurer of State shall transfer from the gross amount of motor fuel taxes collected each month the amount so certified and shall credit it to the Interstate Motor Fuel Tax Refund Fund, which is established on the books of the State Treasury, from which the Department of Finance and Administration shall make refunds as provided by law.

(2) The transfers from the gross motor fuel taxes collected each month shall be after deducting allowances for bad checks or claims but before making any other distribution thereof as provided by law.

(b) All warrants drawn against the fund which are not presented for payment within one (1) year of issuance shall be void.

(c) Neither the director nor any member or employee of the department shall be held personally liable for making any refund by reason of a fraudulent claim being filed as a basis for that refund.

(d) The director is authorized to promulgate rules and regulations and to prescribe the necessary forms required for the administration of claims for tax refunds from interstate users of motor fuels in this state as authorized by law, which rules and regulations shall be in conformance with the following requirements:

(1) The director shall first determine with respect to each refund claim filed that the bond of the interstate user is adequate to compensate the State of Arkansas for any losses with respect to the recovery of any refunds illegally claimed by the interstate user, and the director may require the increase of the bond if the director determines it to be inadequate before approving any claim for refund;

(2) Each interstate user of motor fuels claiming refunds shall maintain adequate records to substantiate each claim for refund, and the director may reject any claim for refund if the director determines the applicant has not maintained adequate records or has not conformed to the rules and regulations of the department in filing the claim;

(3) Each claim for refund must be upon the request of the interstate user, which shall be verified by the interstate user as to its accuracy and validity;

(4)(A) Each quarterly report filed by a licensed interstate user of motor fuels with the department, shall reflect thereon the amount of motor fuels purchased for use in Arkansas during the quarter, the number of gallons of motor fuels upon which taxes are due the State of Arkansas for the quarter, and the excess gallonage upon which the interstate user is entitled to refunds.

(B) At the end of each calendar quarter, the licensed interstate user may make application for refund with respect to the number of gallons of motor fuels upon which the motor fuels taxes have been paid during the calendar quarter for which the interstate user is entitled to refund.

History. Acts 1977, No. 51, §§ 2, 3; 1983, No. 830, § 3; A.S.A. 1947, §§ 75-1155.1, 75-1155.2; Acts 1987, No. 803, §§ 2-4.

Publisher's Notes. Acts 1977, No. 51, §§ 2, 3, as amended, are also codified as § 26-56-215.

26-55-715. [Repealed.]

Publisher's Notes. This section, concerning unlicensed importers, was repealed by Acts 1987, No. 803, § 10. The

section was derived from Acts 1953, No. 112, § 9, as added by Acts 1967, No. 356, § 3; A.S.A. 1947, § 75-1157.

26-55-716. Failure or refusal to pay tax — Penalties, interest, and costs.

Any person who neglects or refuses to pay the tax levied by this subchapter at the time and as provided for in this subchapter shall become liable for the amount of the tax, together with a penalty of twenty percent (20%) thereof or a minimum of five dollars (\$5.00), whichever is greater, plus interest at the rate of six percent (6%) per

annum from the date when due until paid. If the tax, penalty, and interest are collected by proceedings in court, an additional penalty of twenty percent (20%) of the tax shall also be imposed and collected as attorney's fees.

History. Acts 1953, No. 112, § 10; 1957, No. 213, § 4; A.S.A. 1947, § 75-1158.

26-55-717. Unlicensed users — Failure to pay tax — Burden of proof.

(a) If a person who has not obtained a fuel user's license from this state, and who is nevertheless determined a fuel user, leaves the State of Arkansas by a state highway or other road not equipped with a permanent port of entry or exit and has not paid the motor fuel tax or has not purchased tax-paid motor fuel from a licensed dealer in an amount equal to the number of gallons used upon the highways of the State of Arkansas, he or she shall be liable for the payment of the tax due, together with the penalties as set out in § 26-55-716.

(b) If an unlicensed fuel user is within one (1) mile of the state line on the way out of the state and does not have in his or her possession a form issued by a licensed dealer showing the number of gallons purchased equal to the amount used in traveling upon the highways of the State of Arkansas, it shall be prima facie evidence of his or her failure to comply with the requirements of this subchapter, and he or she shall be liable for the payment of the tax due, plus the fine as set out in § 26-55-718.

(c) In the event an unlicensed fuel user enters the State of Arkansas via a state highway not equipped with a permanent port of entry, and the driver of the vehicle does not receive an entry form, then the burden of proof of the point of entry and time of entry for the purpose of determining the miles traveled and the tax due shall be upon the driver or owner of the vehicle.

History. Acts 1953, No. 112, § 10; 1957, No. 213, § 4; 1967, No. 356, § 4; A.S.A. 1947, § 75-1158.

26-55-718. Failure to file report or pay tax, filing fraudulent reports, etc. — Penalties.

Any person who uses gasoline in this state and fails to pay the tax levied by this subchapter or any person who makes a false or fraudulent report hereunder or who otherwise violates any of the provisions of this subchapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than one (1) year, or by both such fine and

imprisonment. Each separate day of the violation shall constitute a separate offense.

History. Acts 1953, No. 112, § 10; 1957, No. 213, § 4; A.S.A. 1947, § 75-1158.

26-55-719. Records — Preservation — Inspection.

(a) Each person, firm, or corporation subject to this subchapter must maintain and keep for a period of three (3) years records of mileage traveled by vehicles operated in this state, together with inventories, withdrawals, purchases supported by invoices, and all relevant records and papers that may be required by the Director of the Department of Finance and Administration.

(b) The director or his or her authorized representative shall be entitled to inspect these records at any time.

History. Acts 1953, No. 112, § 8; A.S.A. 1947, § 75-1156.

SUBCHAPTER 8 — UNLICENSED OUT-OF-STATE TRUCKS

SECTION.

26-55-801. Purpose.

26-55-802. Failure to comply.

26-55-803. Entry slips required — Computation of tax.

SECTION.

26-55-804. Payment of tax.

Effective Dates. Acts 1987, No. 803, § 14: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that this Act makes various changes in the motor fuel tax law and the special motor fuel tax law; that such changes should go into effect at the beginning of the next fiscal year; and that unless this emergency clause is

adopted, this Act may not go into effect until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1987."

26-55-801. Purpose.

The purpose of this subchapter is to afford service station operators throughout the State of Arkansas an equal opportunity in the sale of motor fuel and special motor fuel to out-of-state truckers and to provide a means for payment of the fuel tax.

History. Acts 1965, No. 573, § 4; A.S.A. 1947, § 75-1174.

26-55-802. Failure to comply.

It shall be prima facie evidence of failure to comply with and intent to evade the provisions of this subchapter when any person or operator of an unlicensed motor fuel user or special motor fuel user out-of-state truck who has not complied with this subchapter is traveling upon a state highway within fifty (50) miles of the state line in the direction of exit of the State of Arkansas. The person or operator shall be liable for the penalty and interest set out in § 26-55-716.

History. Acts 1965, No. 573, § 2; A.S.A. 1947, § 75-1173.

26-55-803. Entry slips required — Computation of tax.

(a) All licensed motor fuel user and distillate special fuel user out-of-state trucks with a gross loaded weight of twenty-six thousand one pounds (26,001 lbs.) or more entering the State of Arkansas at the point of entry shall secure a copy of an entry slip from the Director of the Department of Finance and Administration or his or her authorized agent or employee.

(b) The entry slip shall be signed by the director or his or her authorized agent or employee, and the entry slip shall also be signed by the driver of the vehicle.

(c) The entry slip shall contain the following information:

- (1) Name and address of the owner or the operator of the vehicle;
- (2) State of registration;
- (3) License number;
- (4) Speedometer reading;
- (5) Destination and point of leaving state; and
- (6) Description of vehicle.

(d) The entry slip shall remain in the vehicle for the remainder of the trip over the highways of this state and shall be produced for the inspection of the director or his or her authorized employee or representative, at any point within the state and shall also be produced at the port of exit to the director or his or her authorized agent or employee, for determination of any fuel taxes due the state.

(e)(1) For the purpose of determining the amount the interstate user owes the State of Arkansas for tax on motor fuel or distillate special fuel used in this state as provided in this section, the number of gallons of motor fuel or distillate special fuel used in this state shall be determined by an assessment based on the following mileage factors per gallon of motor fuel or distillate special fuel as compared to the appropriate class of vehicle set out in subdivision (e)(2) of this section.

(2) For the purposes of this section:

(A) All automobiles, except buses, with a capacity of less than eight (8) passengers shall be deemed to be Class A vehicles;

(B) All truck-type vehicles, except buses, with a factory rating and gross loaded weight of less than twenty-two thousand five hundred pounds (22,500 lbs.), shall be deemed to be Class B vehicles;

(C) All other vehicles except buses, with a factory rating in excess of twenty-two thousand five hundred pounds (22,500 lbs.), or whose total gross loaded weight exceeds twenty-two thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class C vehicles; and

(D) All buses rated and licensed as such shall be deemed to be Class D vehicles.

(3) The mileage factor per gallon of motor fuel or distillate special fuel for:

(A) Class A vehicles shall be twelve (12) miles;

(B) Class B vehicles shall be eight (8) miles;

(C) Class C vehicles shall be five (5) miles; and

(D) Class D vehicles shall be six (6) miles.

(f) The motor fuel tax and distillate special fuel tax levied by this state shall be paid upon all such fuel used to propel out-of-state trucks upon the highways of this state.

History. Acts 1965, No. 573, § 1; A.S.A. 1947, § 75-1172; Acts 1987, No. 803, § 9; 1993, No. 618, § 11.

26-55-804. Payment of tax.

The tax shall be paid by the owner or operator of the truck or vehicle in either of the following ways, at the option of the owner or operator:

(1)(A) By the purchase of a sufficient amount or quantity of fuel from a retail dealer within the State of Arkansas to propel the vehicle the number of miles which the vehicle travels upon the highways of this state.

(B) At the time of the purchase of the fuel, the owner or operator of such vehicle shall obtain from the dealer from whom purchased an invoice or sales ticket, or forms approved by the Director of the Department of Finance and Administration, which shall contain the name and address of the seller of the fuel, the name and address of the purchaser, the date of purchase, the amount or quantity and kind of fuel purchased, and the invoice or sales ticket shall remain in the vehicle for the remainder of the trip over the highways of this state.

(C) The invoice or sales ticket shall be preserved and retained by the owner or operator for a period of not less than three (3) years and shall be produced for the inspection and examination of the director or his or her authorized agent or employee, at any reasonable time and place, either within or without this state, upon proper demand therefor;

(2)(A) By the payment of the amount of tax which would be due upon a sufficient quantity of fuel to propel the vehicle over the highways of this state to the director or to his or her agent, representative, or employee.

(B) At the time of payment of the tax, the director or his or her employee or representative shall issue to the person paying the tax a receipt showing the amount of tax paid, the name and address of the

owner or operator of the vehicle, a description of the vehicle, including the license number and state of registration, the point at which the vehicle entered upon the highways of this state, the destination and the place where the vehicle is to leave the highways of this state, and any other information which the director may require, which receipt shall be signed by the director or his or her agent or representative.

(C) The receipt shall remain in the vehicle for the remainder of the trip over the highways of this state and thereafter shall be preserved and retained by the owner or operator for a period of not less than three (3) years, and shall be produced for the inspection of the director or his or her authorized agent or representative, at any reasonable time and place either within or without this state upon proper demand.

History. Acts 1965, No. 573, § 1; A.S.A. 1947, § 75-1172.

SUBCHAPTER 9 — VEHICLE TANK INSPECTIONS

SECTION.

- 26-55-901. Definitions.
- 26-55-902. Penalties.
- 26-55-903. Rules and regulations.
- 26-55-904. Measurement of vehicle tanks.
- 26-55-905. Testing stations.
- 26-55-906. Time and place of inspection.
- 26-55-907. Testing and sealing.
- 26-55-908. Marking tank.

SECTION.

- 26-55-909. Reinspection, retesting, and remeasurement.
- 26-55-910. Unlawful to use vehicle tanks unless tested and sealed.
- 26-55-911. Sealing of inlets and outlets.
- 26-55-912. Display of marks indicating proper gauging — Exemption from subchapter.

Effective Dates. Acts 1955, No. 50, § 16: July 1, 1955.

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administra-

tion of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-55-901. Definitions.

As used in this subchapter:

(1)(A) "Compartment" means the entire tank when it is not subdivided.

(B) Otherwise, "compartment" means any one (1) of those subdivisions of a tank designed to hold petroleum products, unless other-

wise provided by the Director of the Department of Finance and Administration by regulations adopted pursuant to § 26-55-903.

(C) "Compartment" includes piping leading from the compartment to the manifold but shall not include the manifold;

(2) "Director" means the Director of the State Plant Board or any employee of the State Plant Board authorized by the director to carry out the provisions of this subchapter;

(3) "Person" means individuals, partnerships, limited liability companies, corporations, companies, societies, and associations;

(4)(A) "Petroleum product" means any liquid hydrocarbon product extracted or refined from crude petroleum, crude oil distillate, or natural gas.

(B) "Petroleum product" includes all products customarily known as gasoline or motor fuel by whatever name such liquid may be known or sold, including naphthas, tractor fuels, residual oils, and asphalts.

(C) "Petroleum product" does not include liquefied petroleum gases; and

(5) "Vehicle tank" means an assembly used for the delivery of petroleum products, comprising a tank which may or may not be subdivided into two (2) or more compartments and which is mounted upon a vehicle, together with its accessory piping, valves, meters, etc.

History. Acts 1955, No. 50, § 1; A.S.A. 1947, § 75-1159; Acts 1995, No. 1160, § 28.

26-55-902. Penalties.

(a)(1) Any person who violates the provisions of this subchapter or the rules or regulations issued under this subchapter shall be guilty of a misdemeanor and for a:

(A) First conviction shall be punished by a fine of not more than one hundred dollars (\$100) or by imprisonment for not more than ten (10) days; and

(B) Second such conviction within one (1) year thereafter such person shall be punished by fine of not more than two hundred dollars (\$200) or by imprisonment for not more than twenty (20) days, or by both such fine and imprisonment.

(2) Upon a third or subsequent conviction within one (1) year after the first conviction, the person shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months, or by both a fine and imprisonment.

(b) Each separate loading of a vehicle tank or compartment thereof in violation of this subchapter shall be deemed a separate offense.

History. Acts 1955, No. 50, § 13; A.S.A. 1947, § 75-1171.

26-55-903. Rules and regulations.

(a) The Director of the State Plant Board shall have the power to adopt and, from time to time, to change by addition, amendment, or repeal reasonable rules and regulations consistent with law, for the enforcement of the provisions of this subchapter.

(b) The rules and regulations to the extent practicable shall be consistent with pertinent nationally recognized standards, methods, and tolerances.

(c) The regulations shall be applicable only to the extent that they are not in conflict with regulations or orders issued by an agency of the United States and shall be drawn with due consideration for the desirability of uniformity of the laws of the several states and the United States.

(d)(1) The rules or regulations and any addition to or amendment or repeal thereof shall be adopted, changed, amended, or repealed only after full public hearing which shall be adjourned from time to time as may be necessary to permit all interested or affected parties to be heard.

(2) At least thirty (30) days' prior written notice of the commencement of such hearing shall be published two (2) times in one (1) newspaper of general circulation which has been designated for that purpose by the director.

(3) The notice shall state the time, place, and purpose of the hearing and shall either set forth in full the rule or regulation to be considered or shall state where and how such full text may be obtained.

(4) A copy of the notice shall be sent at the same time to every person who shall have registered with the director a request to be so notified, together with the name and address to which such notice should be sent.

(5) Any such rule or regulation or amendment or repeal thereof shall be effective sixty (60) days after certified copies have been filed as required by Acts 1953, No. 183 [repealed].

History. Acts 1955, No. 50, §§ 3, 4; A.S.A. 1947, §§ 75-1161, 75-1162.

A.C.R.C. Notes. Acts 1953, No. 183, referred to in subdivision (d)(5) of this section, concerned regulations issued by state agencies. Acts 1953, No. 183, was

repealed by Acts 1967, No. 434, § 16. For current law regarding rules and regulations issued by state agencies, see the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

26-55-904. Measurement of vehicle tanks.

(a) The Director of the State Plant Board shall gauge and determine the capacity of vehicle tanks used in the sale or delivery of petroleum products in this state and inspect and test, to ascertain if they are correct, the capacity indicators of the compartments of those vehicle tanks.

(b) The director is authorized to use the services of a recognized calibrating agency in determining the correctness of measurements

whenever a difference of opinion exists between the owner or operator of a tank and the director as to the correctness of the gauging, and that determination shall be final.

History. Acts 1955, No. 50, § 2; A.S.A. 1947, § 75-1160.

26-55-905. Testing stations.

The Director of the State Plant Board shall establish at locations to be determined by the director a sufficient number of checking stations either fixed or mobile to carry out the purposes of this subchapter. However, the number of stations so established shall not exceed five (5) for the state.

History. Acts 1955, No. 50, § 5; A.S.A. 1947, § 75-1163.

26-55-906. Time and place of inspection.

(a) Every person owning or operating any vehicle tank shall present it to the checking station when notified to do so by the Director of the State Plant Board upon ten (10) days' notice to the person by the director. However, the director shall not require any such vehicle tank to be presented for testing at a checking station which is more than one hundred seventy-five (175) miles distant from the point which is the customary base of operations of that vehicle tank.

(b) The director shall not call in any vehicle tank for recalibrating sooner than eighteen (18) months after the date of last calibration unless the director has evidence or reason to believe that a change in the capacity of the vehicle tank has occurred since the date on which it was last calibrated.

History. Acts 1955, No. 50, § 6; A.S.A. 1947, § 75-1164.

26-55-907. Testing and sealing.

(a) Every compartment of a vehicle tank shall be equipped with permanently attached indicators of the capacity of the compartment.

(b) After each compartment has been gauged or calibrated, if it is approved, the Director of the State Plant Board shall place a seal on each indicator.

(c) It shall be the duty of the owner or operator of the vehicle tank to report to the director immediately the breaking of any such seal on such an indicator which was placed there by the director.

History. Acts 1955, No. 50, § 8; A.S.A. 1947, § 75-1166.

26-55-908. Marking tank.

After testing and sealing by the Director of the State Plant Board, the owner or operator of a vehicle tank shall have stenciled or painted conspicuously on each compartment of the tank the calibrated capacity of the tank and, in addition, shall have stenciled or painted on the tank, or the vehicle to which it is attached, the total calibrated capacity of all compartments of the tank.

History. Acts 1955, No. 50, § 8; A.S.A. 1947, § 75-1166.

26-55-909. Reinspection, retesting, and remeasurement.

If any vehicle tank after having been tested shall become damaged or is repaired or modified in any way which might affect the accuracy of measurement of its deliveries, it shall not again be used for the delivery of petroleum products until it is officially reinspected, if deemed necessary, retested, and remeasured.

History. Acts 1955, No. 50, § 8; A.S.A. 1947, § 75-1166.

26-55-910. Unlawful to use vehicle tanks unless tested and sealed.

It shall be unlawful for any person to use any vehicle tank or compartment thereof for the transportation of the quantity of petroleum products sold or delivered in this state unless the vehicle tank has been tested and sealed as provided in this subchapter and otherwise complies with the provisions of this subchapter. However, no person shall be considered a violator of this subchapter unless and until he or she has received the notice required by § 26-55-906 and until after the time fixed by the notice for the testing of the vehicle tank.

History. Acts 1955, No. 50, § 9; A.S.A. 1947, § 75-1167.

26-55-911. Sealing of inlets and outlets.

In making deliveries of petroleum products, all such tank wagons, tank trucks, and all inlets and outlets to such equipment shall be sealed as may be directed by the Director of the State Plant Board, and no such petroleum products shall be delivered unless sealed as provided in this subchapter. However, the provisions of this section shall apply only to transport trucks bringing petroleum products into the State of Arkansas and to common and contract carriers transporting petroleum products either into or within the State of Arkansas.

History. Acts 1955, No. 50, § 10; A.S.A. 1947, § 75-1168.

26-55-912. Display of marks indicating proper gauging — Exemption from subchapter.

(a) Any vehicles, tanks, and equipment which display symbols or identification marks indicating that the equipment has been properly gauged under the laws of another state will be exempt from the requirements of this subchapter to the same extent that vehicles of this state are exempt in the state which gauged the vehicles, tanks, and equipment in the first instance.

(b) However, this section shall not be applicable if the Director of the State Plant Board has evidence or reason to believe that a change in the capacity of the tank or tank truck has occurred since the date it was last gauged.

History. Acts 1955, No. 50, § 11; A.S.A. 1947, § 75-1169.

SUBCHAPTER 10 — ADDITIONAL TAXES AND FEES**SECTION.**

26-55-1001. Applicability.

26-55-1002. Additional tax levied on motor fuel.

26-55-1003. [Repealed.]

SECTION.

26-55-1004. Disposition of revenues.

26-55-1005. Motor fuel excise tax.

26-55-1006. Excise tax rates.

Publisher's Notes. Acts 1985, No. 456, § 6, contained an emergency clause to the effect that the act would be in full force and effect from and after its passage and approval; Acts 1985, No. 456 was vetoed by the Governor on March 19, 1985, but passed over his veto by the General Assembly on March 20, 1985.

Cross References. Additional taxes on motor fuel, distillate special fuels, and liquefied gas special fuels, § 26-55-1201 et seq.

Levy of tax, § 26-55-205.

Effective Dates. Acts 1985, No. 456, § 6. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the rural roads, highways, roads and streets in this State are operationally hazardous and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction and reconstruction of such roads, highways and streets is essential to the public health, welfare and safety of the people of this State and that only by the immediate passage of this Act

may such vitally needed additional funds be provided to solve the aforementioned problem. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Vetoed, Mar. 19, 1985 and passed over veto Mar. 20, 1985.

Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being neces-

sary for the preservation of the public peace, health and safety shall be in full force and effect on and after the first day of the first month immediately following its passage and approval."

Acts 1999, No. 1028, § 9: Apr. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that existing highway user revenue sources do not provide sufficient funds for the necessary maintenance, repair, construction and reconstruction of state highways, county roads and municipal streets; that there is an immediate and urgent need for adequate state highways, county roads and municipal streets; that the continued economic expansion and growth of this state will be jeopardized if an adequate system of state highways, county roads and municipal streets is not provided; and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve these problems. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of

time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 685, § 4: Mar. 9, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need for the construction, reconstruction, and renovation of highways and roads comprising the federal interstate road system within the State of Arkansas; that a construction program cannot be accomplished without the issuance of bonds secured by federal highway assistance payments to finance the program; and that this act is immediately necessary in order to begin the process of facilitating the issuance of bonds. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-55-1001. Applicability.

The additional taxes and fees levied in this subchapter on motor fuel, distillate special fuels, liquefied petroleum gas special fuel, and vehicles using liquefied petroleum gas special fuel shall be applicable to motor fuel and distillate special motor fuels sold and to liquefied petroleum gas vehicles which are registered or for which registration is renewed on and after April 1, 1985.

History. Acts 1985, No. 456, § 4; A.S.A. 1947, § 75-1281.

Publisher's Notes. Acts 1985, No. 456,

§§ 1-4, are also codified as § 26-56-501 et seq.

26-55-1002. Additional tax levied on motor fuel.

(a) In addition to the tax levied upon motor fuel in § 26-55-205, there is levied an excise tax of four cents (4¢) per gallon upon all motor fuel subject to the tax levied in that section.

(b) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of other motor fuel taxes.

History. Acts 1985, No. 456, § 1; A.S.A. 1947, § 75-1278; Acts 1989, No. 821, § 10.

Cross References. Additional taxes on motor fuel, distillate special fuels, and liquefied gas special fuels, § 26-55-1201 et seq.

26-55-1003. [Repealed.]

Publisher's Notes. This section, concerning additional fees for vehicles using liquefied gas special fuel, was repealed by Acts 1991, Nos. 364 and 382, § 6. The section was derived from Acts 1985, No. 456, § 2; A.S.A. 1947, § 75-1279.

26-55-1004. Disposition of revenues.

(a)(1) All taxes, interest, penalties, and costs received by the Director of the Department of Finance and Administration from the additional taxes and fees levied by this subchapter shall be classified as special revenues and shall be deposited into the State Treasury.

(2) The net amount thereof shall be transferred by the Treasurer of State on the last business day of each month, as follows:

(A) Fifteen percent (15%) of the amount to the County Aid Fund;

(B) Fifteen percent (15%) of the amount to the Municipal Aid Fund; and

(C) Seventy percent (70%) of the amount to the State Highway and Transportation Department Fund.

(b)(1) All such funds credited the State Highway and Transportation Department Fund shall be used for construction, reconstruction, and maintenance of the rural state highways of the state and their extensions into municipalities and industrial access roads.

(2) The State Highway Commission shall provide to each member of the General Assembly on January 1, 1986, and annually thereafter, a report indicating how the money provided by this subchapter was spent, which roads were worked on, and what other progress was made regarding the plan outlined to the General Assembly by the commission during the debate on this subchapter.

History. Acts 1985, No. 456, § 3; A.S.A. 1947, § 75-1280.

26-55-1005. Motor fuel excise tax.

This act may be referred to and cited as the "Arkansas Distillate Special Fuel Excise Tax Act of 1999" and the "Motor Fuel Excise Tax Act of 1999".

History. Acts 1999, No. 1028, § 1. 1028, codified as §§ 26-55-1005, 26-55-1006, 26-56-201, and 27-72-305.
Meaning of "this act". Acts 1999, No.

26-55-1006. Excise tax rates.

(a)(1) On and after July 1, 1999, in addition to the taxes levied on motor fuel in §§ 26-55-205, 26-55-1002, and 26-55-1201, there is levied an additional excise tax of one cent (1¢) per gallon upon all motor fuels subject to the taxes levied in those sections.

(2) On and after July 1, 2000, the additional tax levied by this subsection shall be increased to two cents (2¢) per gallon.

(3) On and after July 1, 2001, the additional tax levied by this subsection shall be increased to three cents (3¢) per gallon.

(b) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of the other motor fuel taxes under Arkansas law.

(c) The additional tax levied by this section shall be taken into consideration and used when calculating tax credits or additional tax due under § 26-55-710.

(d) The additional taxes collected pursuant to this section shall be considered special revenues and shall be distributed as set forth in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

History. Acts 1999, No. 1028, §§ 3, 4; deleted former (d)(2); and redesignated 2005, No. 685, § 3. former (d)(1) as present (d).

Amendments. The 2005 amendment

SUBCHAPTER 11 — INTERNATIONAL FUEL TAX AGREEMENT

SECTION.

26-55-1101. Definition.

26-55-1102. Authority to enter Agreement — Audits not precluded — Identification decal costs.

SECTION.

26-55-1103. Persons subject to Agreement provisions.

26-55-1101. Definition.

As used in this subchapter, “director” means the Director of the Department of Finance and Administration or his or her authorized agent.

History. Acts 1989, No. 854, § 1.

26-55-1102. Authority to enter Agreement — Audits not precluded — Identification decal costs.

(a) The Director of the Department of Finance and Administration is authorized to enter into the International Fuel Tax Agreement of July 1987 with jurisdictions outside this state to provide for cooperation and assistance among member jurisdictions in the administration and collection of taxes imposed upon the consumption of all fuels used in vehicles operated or intended to operate interstate. Provided, however,

that such agreement shall not be effective until stated and agreed to in writing and filed with the director.

(b) The agreement authorized by this subchapter may provide for determining the base jurisdiction for fuel users, users' record requirements, audit procedures, exchange of information, eligibility for licensing, definition of qualified motor vehicles, definition of motor fuels, bond requirements, reporting requirements, reporting periods, methods for collecting and forwarding fuel taxes and penalties to another jurisdiction, and other provisions to facilitate the administration of the agreement.

(c) No agreement authorized by this subchapter shall preclude the director from auditing the records of any person subject to the provisions of this chapter or the Special Motor Fuels Tax Law, § 26-56-101 et seq.

(d) For the purposes of this subchapter, the amount necessary to recover reasonable administrative costs for issuance of a vehicle identification decal is hereby determined to be that amount required to be paid for the distinctive marking under § 26-55-708.

History. Acts 1989, No. 854, § 1.

26-55-1103. Persons subject to Agreement provisions.

Upon and after the date on which the International Fuel Tax Agreement of July 1987 becomes effective, every person who holds a valid license issued by a member jurisdiction of such agreement shall be subject to the provisions of such agreement, which provisions shall prevail in the case of any conflict with the provisions of this chapter or the Special Motor Fuels Tax Law, § 26-56-101 et seq. Provided, however, that for all persons other than those holding a valid license issued by a member jurisdiction of the International Fuel Tax Agreement of July 1987, the provisions of this chapter and the Special Motor Fuels Tax Law, § 26-56-101 et seq. shall be and remain fully applicable.

History. Acts 1989, No. 854, § 1.

SUBCHAPTER 12 — ADDITIONAL TAXES ON MOTOR FUEL, DISTILLATE SPECIAL FUELS, AND LIQUEFIED GAS SPECIAL FUELS

SECTION.

26-55-1201. Additional taxes on motor fuel, distillate special fuels and liquefied gas special fuels.

SECTION.

26-55-1202. Additional funds deposited into State Treasury.

Effective Dates. Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that

many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the mainte-

nance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after the first day

of the first month immediately following its passage and approval.”

Acts 1991, Nos. 1040 and 1239, § 11: Apr. 8, 1991, and Apr. 10, 1991, respectively. Emergency clause provided: “It has been found and it is hereby declared by the General Assembly that there is an immediate need for the construction and repair of the State Highway System. For these reasons, it is declared necessary for the preservation of the public peace, health, and safety that this Act become effective without delay. It is, therefore, declared that an emergency exists, and this Act shall take effect from the date of its passage and approval.”

26-55-1201. Additional taxes on motor fuel, distillate special fuels and liquefied gas special fuels.

(a) On and after March 6, 1991, in addition to the taxes levied upon motor fuel in §§ 26-55-205 and 26-55-1002 and upon distillate special fuels in §§ 26-56-201 and 26-56-502 and upon liquefied gas special fuels in §§ 26-56-301 and 26-56-502, and in addition to any other taxes levied on such fuel or fuels during the Seventy-Eighth Regular Session of the General Assembly, there is hereby levied an excise tax of five cents (5¢) per gallon upon all motor fuel and liquefied gas special fuels and an excise tax of two cents (2¢) per gallon upon all distillate special fuels subject to the taxes levied in §§ 26-55-205, 26-55-1002, 26-56-201, 26-56-502, 26-56-301 and 26-56-502.

(b) Such additional taxes shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of other motor fuel taxes, distillate special fuels taxes, and liquefied gas special fuels taxes.

History. Acts 1991, No. 364, § 1; 1991, No. 382, § 1. 1991, Nos. 364 and 382, § 1, are also codified as § 26-56-601.

Publisher's Notes. Identical acts

26-55-1202. Additional funds deposited into State Treasury.

(a) All of the additional taxes, fees, penalties, and interest collected under the provisions of this subchapter and §§ 26-55-710, 26-56-214, and 26-56-304 shall be classified as special revenues and shall be deposited into the State Treasury. After deducting therefrom the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

(1) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

(2) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

(3) Seventy percent (70%) of the amount thereof to a special account in the State Highway and Transportation Department Fund to be designated the "1991 Highway Construction and Maintenance Account".

(b) The funds in the 1991 Highway Construction and Maintenance Account shall be held, managed, and used in the same manner and for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., excluding however, § 27-70-206.

(c) Provided that, in keeping with the spirit of Pub. L. No. 97-424, § 105, and the Arkansas State Highway Commission's goals for encouraging the participation of disadvantaged business enterprises in entering into and performing contracts with the commission, including the purchasing of supplies and equipment by the commission and for the construction, reconstruction, and maintenance of highways and bridges in the state highway system, the commission is authorized to expend up to ten percent (10%) of the total funds and revenues available and disbursed to the commission pursuant to this act for the purposes of achieving those goals.

History. Acts 1991, No. 364, § 5; 1991, No. 382, § 5; 1991, No. 1040, §§ 5-8; 1991, No. 1239, §§ 5-8.

Publisher's Notes. Identical Acts 1991, Nos. 364 and 382, § 5, are also codified as § 26-56-602.

Identical Acts 1991, Nos. 1040 and 1239, § 4, provided: "(a) This Act shall be liberally construed to accomplish the purposes thereof. This Act shall constitute the sole authority necessary to accomplish the purposes hereof, and to this end it shall not be necessary that the provisions of other laws pertaining to the development

of public facilities and properties and the financing thereof be complied with.

"(b) This Act shall be interpreted to supplement existing laws conferring rights and powers upon the Authority and the Commission, and the rights and powers set forth herein shall be regarded as alternative methods for the accomplishment of the purposes of this Act."

U.S. Code. Public Law 97-424, referred to in this section, is codified primarily as 23 U.S.C. § 101 et seq., 26 U.S.C. § 4041 et seq., and 26 U.S.C. § 6411 et seq.

SUBCHAPTER 13 — REFUNDS — MOTOR FUELS USED BY FIRE DEPARTMENTS

SECTION.

- 26-55-1301. Definitions.
- 26-55-1302. Applicability.
- 26-55-1303. Refund permit.
- 26-55-1304. Applications for refunds.
- 26-55-1305. Refund paid from Gasoline Tax Refund Fund.

SECTION.

- 26-55-1306. Records — Inspection.
- 26-55-1307. Construction.
- 26-55-1308. Director's powers.

26-55-1301. Definitions.

As used in this subchapter:

(1) "Director" means the Director of the Department of Finance and Administration or any of his or her deputies, employees, or agents;

(2) "Distillate special fuel" means distillate special fuel as defined in § 26-56-102;

(3)(A) "Fire truck" means fire department-owned firefighting apparatus used to respond to fire alarms, including, but not limited to, tanker trucks, pumper trucks, and equipment trucks.

(B) "Fire truck" does not include passenger vehicles and ambulances; and

(4) "Motor fuel" means motor fuel as defined in § 26-55-202.

History. Acts 2001, No. 419, § 1.

Publisher's Notes. Acts 2001, No. 419,

§ 1, is also codified as § 26-56-701.

26-55-1302. Applicability.

Any fire department that purchases motor fuel or distillate special fuel for use in a fire truck shall be entitled to a refund of the motor fuel tax or distillate special fuel tax paid.

History. Acts 2001, No. 419, § 2.

Publisher's Notes. Acts 2001, No. 419,

§ 2, is also codified as § 26-56-702.

26-55-1303. Refund permit.

(a) No fire department shall secure a refund of tax under this subchapter unless the fire department is the holder of an unrevoked permit which was issued by the Director of the Department of Finance and Administration before the purchase of the motor fuel or the distillate special fuel.

(b) The permit shall be numbered and shall entitle the fire department to make an annual application for refund under this subchapter.

(c) An application for the permit shall be filed with the director on forms prescribed by the director and shall contain such information as the director may require.

(d) No person shall knowingly make a false or fraudulent statement in an application for a refund permit or in an application for a refund of any taxes under this subchapter.

(e) The refund permit of any person who violates any provision of this subchapter shall be revoked by the director and shall not be reissued until two (2) years have elapsed after the date of the revocation.

History. Acts 2001, No. 419, § 3.

Publisher's Notes. Acts 2001, No. 419,

§ 3, is also codified as § 26-56-703.

26-55-1304. Applications for refunds.

(a) The refund permit holder shall file with the Director of the Department of Finance and Administration an application for refund on

forms furnished by the director which shall include, but not be limited to, the following information:

(1) The quantity of motor fuel and distillate special fuel purchased for use in its fire trucks;

(2) A statement that the motor fuel and distillate special fuel have been used exclusively in its fire trucks;

(3) The amount of the tax claimed to be refunded;

(4) The name, post office, and resident address of the fire department;

(5) The name and address of the sellers from whom the motor fuel and distillate special fuel were purchased; and

(6) Other information as the director shall require.

(b)(1) An application for a refund shall be accompanied by a paid receipt for the purchase price of motor fuel and distillate special fuel on which the refund is sought.

(2) The application shall be notarized and made to the director.

(c) All claims for a refund under the provisions of this subchapter shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(d)(1) The director shall promulgate a rule establishing the annual date for claiming a refund pursuant to this subchapter.

(2) A refund shall only be granted for a purchase of motor fuel and distillate special fuel made within one (1) calendar year of the annual date for claiming the refund.

History. Acts 2001, No. 419, § 4.

Publisher's Notes. Acts 2001, No. 419, § 4, is also codified as § 26-56-704.

26-55-1305. Refund paid from Gasoline Tax Refund Fund.

(a) All valid claims for refund of the motor fuel tax under the provisions of this subchapter shall be paid from the Gasoline Tax Refund Fund and shall be subject to the same conditions and limitations as provided under § 26-55-407, except that all the motor fuels covered by the provisions of this subchapter shall be subject to the full refund of the motor fuel taxes paid.

(b)(1)(A) The Director of the Department of Finance and Administration shall annually estimate the amount necessary to pay refunds to the users of distillate special fuel who are entitled to refunds with respect to distillate special fuel taxes paid in this state as authorized in this subchapter.

(B) Upon certification by the director, the Treasurer of State shall transfer from the gross amount of distillate special fuel taxes collected each month the amount so certified and shall credit the amount to the fund.

(2) The transfers from the distillate special fuel taxes collected each month shall be made after deducting allowances for bad checks or claims but before making any other distribution as provided by law.

(c)(1) All valid claims for refund of the distillate special fuel tax under the provisions of this subchapter shall be paid from the fund.

(2) The refund for purchases of distillate special fuel tax shall not include the moneys which have been pledged to the repayment of highway bonds under § 26-56-201.

(d) All warrants drawn against the fund that are not presented for payment within one (1) year after issuance shall be void.

(e) Neither the director nor any member or employee of the Department of Finance and Administration shall be held personally liable for making any refund by reason of a fraudulent claim filed as a basis for such a refund.

History. Acts 2001, No. 419, § 5.

Publisher's Notes. Acts 2001, No. 419, § 5, is also codified as § 26-56-705.

26-55-1306. Records — Inspection.

(a) The Director of the Department of Finance and Administration shall keep a permanent record by fire department of the amount of refund claimed and paid to each claimant.

(b) The records shall be open to public inspection.

History. Acts 2001, No. 419, § 6.

Publisher's Notes. Acts 2001, No. 419, § 6, is also codified as § 26-56-706.

26-55-1307. Construction.

Nothing in this subchapter shall be construed as an impairment of the obligation existing between the State of Arkansas and the holders of Arkansas state highway bonds, whether the bonds have already been issued or may be issued in the future.

History. Acts 2001, No. 419, § 7.

Publisher's Notes. Acts 2001, No. 419, § 7, is also codified as § 26-56-707.

26-55-1308. Director's powers.

The Director of the Department of Finance and Administration may make, amend, and enforce regulations, subpoena witnesses and documents, administer oaths, and do and perform all other acts necessary to carry out the purpose and intent of this subchapter.

History. Acts 2001, No. 419, § 8.

Publisher's Notes. Acts 2001, No. 419, § 8, is also codified as § 26-56-708.

CHAPTER 56

SPECIAL MOTOR FUELS TAXES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. DISTILLATE SPECIAL FUELS.
3. LIQUEFIED GAS.
4. DIESEL-POWERED VEHICLES.
5. ADDITIONAL TAXES AND FEES.
6. ADDITIONAL TAXES ON MOTOR FUEL, DISTILLATE SPECIAL FUELS, AND LIQUEFIED GAS SPECIAL FUELS.
7. REFUNDS — MOTOR FUELS USED BY FIRE DEPARTMENTS.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-6 may not apply to subchapter 7 which was enacted subsequently.

RESEARCH REFERENCES

Am. Jur. 72 Am. Jur. 2d, State Tax.,
§ 616 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 26-56-101. Title.
- 26-56-102. Definitions.
- 26-56-103. Penalties.
- 26-56-104. Rules and regulations.
- 26-56-105. Payment of tax by the Arkansas State Highway and Transportation Department.
- 26-56-106. Failure, refusal, etc., to make report or pay tax — Penal-

SECTION.

- ties, interest — Attorney's fees.
- 26-56-107. False or fraudulent reports — Fraudulent avoidance of tax — Penalty.
- 26-56-108. Assessment of delinquent tax — Time limitations.
- 26-56-109. Distribution of revenues.

Effective Dates. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 7: June 10, 1965. Emergency clause provided: “It is hereby found and determined by the General Assembly that the existing highway user tax laws of this State are inadequate to provide sufficient funds to properly construct, reconstruct and maintain the State highways, county roads and city streets of this State; that the existing investment of millions of dollars in public roads, streets and bridges is in jeopardy if additional funds are not provided; that increased motor vehicle traffic poses a serious threat to

public safety unless immediate steps are taken to provide a more adequate and better maintained system of public roads, streets and bridges; that the existing Special Motor Fuels Tax Law of this State is not conducive to proper enforcement, and immediate steps must be taken to provide for a more enforceable law in order to avoid tax evasion; and, that the immediate passage of this Act is necessary to correct the aforementioned circumstances. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation

of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1967, No. 199, §§ 2, 3: July 1, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that a limitation period for collection of taxes, penalties and interest is necessary to the economic welfare of suppliers, dealers and users of special motor fuel in this State; that it is an undue burden and hardship on such suppliers, dealers and users to maintain records for an indefinite period, and that this Act is immediately necessary to establish a limitation on the collection of such taxes and to thereby remove an undue burden on such suppliers, dealers and users. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall take effect on the date of its passage and approval." Approved Mar. 6, 1967.

Acts 1987, No. 985, § 17, as revised by Acts 1987 (1st Ex. Sess.), No. 20, § 7: Aug. 1, 1987. Acts 1987, No. 985, § 17 provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious danger of losing revenues which are necessary to provide adequate funding for essential needs of the citizens of this State and the provisions of this Act are necessary to avoid a substantial reduction in State revenues. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect on and after July 1, 1987." However, Acts 1987 (1st Ex. Sess.), No. 20, § 7 provided: "Act 985 of 1987 shall not be in effect on and after July 1, 1987, as stated in Section 17 of Act 985 of 1987 but shall be in full force and effect on and after August 1, 1987."

Acts 1987 (1st Ex. Sess.), No. 20, § 10: June 12, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that, for the purpose of administering the distillate special fuel tax to increase revenues necessary for essential services required by the citizens of this State, it is necessary to remove the requirement of an exemption certificate for purchasers of distillate special fuel for off-road use. Therefore, an emergency is hereby declared to exist and

this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 688, § 10: Mar. 21, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that some taxpayers are not properly completing and timely filing tax returns; that these failures create an administrative burden upon the Department of Finance and Administration; and that this act is designed to impose a fifty dollar (\$50) penalty for failure to timely file returns, even if no tax is due, or if returns are not properly completed. Therefore, an emergency is hereby declared to exist and this act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1026, § 9: Apr. 12, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that confusion exists among wholesalers of diesel fuel with respect to the reporting of inventories of diesel fuel for taxation purposes pursuant to the 'Special Motor Fuels Tax Law' and as a consequence diesel fuel tax revenues may be due the state at an earlier date than some wholesalers are remitting them. It is also found that such fuel tax revenues are greatly needed by the state in a timely manner as contemplated by the current diesel fuel tax laws in order that improvements may be expeditiously made to the State Highway System, the county roads, and the municipal streets. It is further found that the amendments contained in this act clarifying the 'Special Motor Fuels Tax Law' are necessary to correct the aforementioned problems. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that

purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2007, No. 87, § 8: July 1, 2007: Emergency clause provided: “It is found and determined by the General Assembly that due to sharp increases in oil prices, traditional fuel taxation has become a large percentage of the cost of production

for Arkansas farmers thereby creating burdensome price increases for Arkansas consumers; that a change in the manner in which tax is paid on dyed diesel fuel is necessary to reduce the cost of production for Arkansas farmers; and that this act is necessary in order to provide tax relief as soon as reasonably possible. Therefore, an emergency is declared to exist and this act being necessary for the preservation of public peace, health, and safety shall become effective on July 1, 2007.”

26-56-101. Title.

This chapter may be known and cited as the “Special Motor Fuels Tax Law”.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 1, § 1; A.S.A. 1947, § 75-1239.

26-56-102. Definitions.

As used in this chapter:

(1) “Bill of lading” means and includes any serially numbered document which shall clearly indicate the following:

(A) The seller’s supplier license number;

(B) The origin of the transport trip;

(C) The approximate destination or destinations of the transport trip;

(D) The type or types of distillate special fuel being transported and the quantity or quantities of distillate special fuel to be delivered to each destination;

(E) The person or persons responsible for the payment of the distillate special fuel tax; and

(F) Such other information or forms as the Director of the Department of Finance and Administration by regulation may adopt or require to implement the intent of this subchapter;

(2)(A) “Bulk” as used in connection with the sale and handling of distillate special fuel means a quantity of distillate fuel in excess of sixty gallons (60 gals.).

(B) “Bulk” as used in connection with the sale and handling of liquefied gas special fuels means any quantity of liquefied gas other than gas in cylinders containing one hundred pounds (100 lbs.) or less;

(3)(A) “Bulk storage facility” means an above-ground or below-ground storage tank connected to a fueling rack customarily used for making wholesale sales.

(B) “Bulk storage facility” does not mean or include any storage tanks or facilities located at any retail outlet of distillate special fuel

owned by that supplier nor any storage tanks or facilities located at any other retail outlet of distillate special fuel;

(4) "Dealer" means and includes every person who sells distillate special fuels or liquefied gas special fuels at retail and delivers such special fuels into the special fuel tanks of motor vehicles;

(5) "Director" means the Director of the Department of Finance and Administration or his or her duly authorized agents;

(6)(A)(i) "Distillate special fuel" means and includes all liquids or combination of liquids used or suitable for use in an internal combustion engine or motor for the generation of power for motor vehicles, except fuels subject to the tax levied by the Motor Fuel Tax Law, § 26-55-201 et seq., or liquefied gas special fuels as defined herein.

(ii) "Distillate special fuel" includes products commonly referred to as diesel, kerosene, jet fuel, heating oil or fuel oil, cutter stock, and light cycle oil.

(B) "Distillate special fuel" does not include:

(i) Oil that is:

(a) Derived solely from plants or animals or any mixture of plants or animals;

(b) Free from any petroleum products; and

(c) Not chemically altered by distillation, transesterification, or other similar chemical process; or

(ii) Oil that is:

(a) Normally sold for cooking purposes and purchased from retail outlets; or

(b) Used cooking oil recycled and gathered from restaurants and commercial food processors;

(7) "Exporting" means taking distillate special fuel or liquefied gas special fuels out of this state;

(8) "First receiver" means a supplier who purchases distillate special fuel from a pipeline importer or who imports distillate special fuel into the state by motor vehicle tank truck;

(9) "Gallon" means one (1) U.S. gallon adjusted in volume at a temperature of sixty degrees Fahrenheit (60° F);

(10) "Importing" means bringing distillate special fuel or liquefied gas special fuels into this state;

(11) "Interstate user" means any person who imports or exports distillate special fuel into or out of this state in the fuel supply tanks of motor vehicles owned or operated by him or her;

(12)(A) "Liquefied gas special fuels" means and includes all combustion gases derived from petroleum or natural gas which are in a gaseous state at normal atmospheric temperature and pressure but which may be maintained in a liquefied state at normal atmospheric temperature by the application of sufficient pressure, used or suitable for use in an internal combustion engine or motor for the generation of power for motor vehicles.

(B) "Liquefied gas special fuels" does not include fuel subject to the tax levied by the Motor Fuel Tax Law, § 26-55-201 et seq., and does

not include distillate special fuel as defined in subdivision (6) of this section;

(13) "Motor vehicles" means and includes any automobile, truck, truck-tractor, tractor, bus, vehicle, or other conveyance which is propelled by an internal combustion engine or motor and is licensed or required to be licensed for highway use;

(14) "Off-road consumer" means any person who purchases distillate special fuel in bulk quantities and not for motor vehicle use;

(15) "Person" means every natural person, fiduciary, partnership, limited liability company, firm, association, corporation, business trust combination acting as a unit, any receiver appointed by any state or federal court, or any municipality, county, or any subdivision, department, agency, board, commission, or other instrumentality of this state, except the Arkansas State Highway and Transportation Department;

(16)(A) "Pipeline importer" means a supplier who imports distillate special fuel by common carrier pipeline, barge, or rail.

(B) A supplier who imports distillate special fuel exclusively by motor vehicle tank truck is not a pipeline importer;

(17) "Purchase" includes any acquisition of ownership;

(18) "Received" means and includes the following:

(A) Distillate special fuel which is produced, refined, prepared, distilled, manufactured, blended, or compounded at any refinery at any place in the State of Arkansas by any person shall be deemed to be "received" by such person thereat when the distillate special fuel shall have been loaded at such refinery or other place into tank cars, ships, or barges, or when the distillate special fuels shall have been placed in any tank at or by such refinery and from which any withdrawals are made directly into tank trucks, tank wagons, pipelines, or other types of transportation equipment, containers, or facilities, other than tank cars, ships, or barges, or from which any sales or deliveries not involving transportation are made directly;

(B) Distillate special fuel which is imported into the State of Arkansas from any other state, territory, or foreign country by vessel and delivered in that vessel to any person at a marine terminal in this state for storage or imported into this state by pipeline and delivered to any person by that pipeline or a connecting pipeline at a pipeline terminal or pipeline tank farm in this state for storage shall be deemed to have been "received" by such person thereat when the distillate special fuel shall have been loaded into tank cars, ships, or barges at such marine or pipeline terminal or tank farm for any purpose, or when the distillate special fuel shall have been placed in any tank of less than one hundred thousand gallons (100,000 gals.) capacity thereat, or elsewhere, by such person, or when the distillate special fuel shall have been placed in any tank thereat, or elsewhere by such person, and from which any withdrawals are made directly into tank trucks, tank wagons, pipelines, or other types of transportation equipment, containers, or facilities, other than tank cars, ships, or barges, or from which tank any sales or deliveries not involving transportation are made directly, but not before;

(C) Distillate special fuel purchased in a tank car which shall be unloaded in the State of Arkansas, shall be deemed to be "received" at the time when and place where the tank car is unloaded, but not before;

(D) Distillate special fuel imported by any person into this state from any other state, territory, or foreign country, other than by vessel for storage at marine terminals as provided in this section, or by pipeline for storage at pipeline terminals or pipeline tank farms as provided in this section, or by tank car, shall be deemed to be "received", in the case of distillate special fuel imported from a foreign country at the time when and the place where the distillate special fuel shall be withdrawn from the original container in which the same was imported, but not before, and shall be deemed to be "received" in the case of distillate special fuel imported from another state or territory of the United States, at the time when and the place where the interstate transportation of such distillate special fuel shall have been completed within this state, but not before;

(E) Distillate special fuel purchased by one (1) licensed supplier from another licensed supplier shall be deemed to be "received" by the supplier purchasing the distillate special fuel at the time possession of the distillate special fuel passes;

(19) "Sale" includes any exchange, gift, or other disposition;

(20)(A) "Supplier" means any person who is customarily in the wholesale business of offering distillate special fuel or liquefied gas special fuels for resale or use to any person in this state and who makes bulk sales of fuel.

(B) "Supplier" includes pipeline importers and first receivers;

(21) "Terminal" means and includes every person in the business of withdrawing or removing distillate special fuel from any pipeline outlet in this state and then storing such distillate special fuel in any type of storage container;

(22) "Use" or "used" means:

(A) Keeping distillate special fuel or liquefied gas special fuels in storage and selling, using, or otherwise disposing of the same for the operation of motor vehicles;

(B) Selling distillate special fuel or liquefied gas special fuels in this state to be used for operating motor vehicles;

(C) Operating a motor vehicle in this state with distillate special fuel or liquefied gas special fuels; and

(D) Importing distillate special fuel or liquefied gas special fuels into this state; and

(23) "User" means and includes every person who delivers or causes to be delivered any distillate special fuel or any liquefied gas special fuels into the supply tank of motor vehicles used or operated by him or her.

History. Acts 1965 (1st Ex. Sess.), No. 1947, § 75-1240; Acts 1987, No. 985, 40, ch. 1, § 2; 1979, No. 591, § 1; A.S.A. §§ 2-5; 1987 (1st Ex. Sess.), No. 20, §§ 2,

3; 1993, No. 618, § 1; 1993, No. 1026, § 1; 1993, No. 1029, § 4; 1995, No. 1160, § 29; 1997, No. 1212, §§ 1, 2; 2007, No. 690, § 2.

Publisher's Notes. Acts 1987, No. 985, § 1, provided: "Except as otherwise specifically provided in this Act, all terms and phrases used herein will have the same meaning as ascribed to them under Act 40 of 1965, First Extraordinary Session, as amended."

Acts 1993, No. 1026, § 5, provided: "The Director of the Department of Finance and Administration is hereby authorized to make and promulgate all rules and regulations deemed necessary or desirable by that Director in order that the

amendments contained in this act be effectuated as soon as practicable following the passage and approval of this act."

Acts 1993, No. 1029, § 7, provided: "The Director of the Department of Finance and Administration is hereby directed, with the advise and concurrence of the Director of Highways and Transportation, or his designee, to make and promulgate all rules and regulations deemed necessary or desirable by such Directors in order that the amendments contained in this Act be effectuated by July 1, 1993."

Amendments. The 2007 amendment added present (6)(B); and made related changes.

26-56-103. Penalties.

Any person who violates or fails or refuses to comply with any provision of this chapter for which a specific penalty is not otherwise prescribed shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned not less than ten (10) days nor more than sixty (60) days, or both so fined and imprisoned.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 3; 1967, No. 199, § 1; A.S.A. 1947, § 75-1268.

26-56-104. Rules and regulations.

The Director of the Department of Finance and Administration is authorized and empowered to promulgate such rules and regulations, not inconsistent with this chapter, as the director shall deem necessary and desirable to facilitate the collection of the taxes levied in this chapter and to otherwise effectuate the purposes of this chapter, and these rules and regulations shall have the same effect as if specifically set forth in this chapter.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 1; A.S.A. 1947, § 75-1266.

26-56-105. Payment of tax by the Arkansas State Highway and Transportation Department.

(a) The Arkansas State Highway and Transportation Department shall pay the special motor fuel tax established by this chapter on the special motor fuels used in its motor vehicles as defined in § 26-56-102(13).

(b) The department shall remit this tax each month to the Director of the Department of Finance and Administration who will distribute the tax as outlined in this chapter.

(c) For purposes of computing this tax, the department shall use its fuel consumption reports and shall file with the director an appropriate monthly report stating the gallons used in the department's motor vehicles and the tax due and payable.

(d) The department shall not be required to maintain separate special fuel storage facilities for fuel used in its motor vehicles and in its off-the-road equipment.

History. Acts 1979, No. 591, § 2; A.S.A. 1947, § 75-1243.1.

26-56-106. Failure, refusal, etc., to make report or pay tax — Penalties, interest — Attorney's fees.

(a)(1) Once a supplier, dealer, or user of distillate special fuel or liquefied gas special fuels has become liable to file a report with the Director of the Department of Finance and Administration, he or she must continue to file a report, even though no tax is due, until such time as he or she notifies the director in writing that he or she is no longer liable for those reports.

(2) Any supplier, dealer, or user of distillate special fuel or liquefied gas special fuels who fails, neglects, or refuses to make any report required by this chapter or to pay any tax levied at the time and in the manner required in this chapter in addition to any other penalty provided in this chapter shall be liable for the amount of the tax due, plus any penalties allowed by law.

(b) If the tax, penalty, and interest are collected by proceedings in court, an additional penalty of twenty percent (20%) of the tax shall be imposed and collected as attorney's fees.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 3; 1967, No. 199, § 1; A.S.A. 1947, § 75-1268; Acts 1991, No. 688, § 4.

26-56-107. False or fraudulent reports — Fraudulent avoidance of tax — Penalty.

Any person who makes a false or fraudulent report hereunder or who fraudulently attempts to avoid the payment of the tax herein levied on any distillate special fuel or liquefied gas special fuels shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000) or by imprisonment for not less than thirty (30) days nor more than six (6) months, or both so fined and imprisoned.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 3; 1967, No. 199, § 1; A.S.A. 1947, § 75-1268.

26-56-108. Assessment of delinquent tax — Time limitations.

No assessment of delinquent distillate special fuel tax or liquefied gas special fuel tax or penalties or interest shall be made for any month after the expiration of three (3) years from the date set for the filing of such monthly return. However, that in case of a false or fraudulent report with intent to evade tax or of failure to file a report, assessment may be made at any time.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 3; 1967, No. 199, § 1; A.S.A. 1947, § 75-1268.

26-56-109. Distribution of revenues.

Except as provided in § 26-56-224(b) – (f), all taxes, penalties, and other amounts collected under the provisions of this chapter shall be classified as special revenues, and the net amount shall be distributed as provided by the Arkansas Highway Revenue Distribution Law, §§ 27-70-201 — 27-70-203, 27-70-206, and 27-70-207.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 2; A.S.A. 1947, § 75-1267; Acts 2007, No. 87, § 3.

Amendments. The 2007 amendment added “Except as provided in § 26-56-224(b)-(f)” at the beginning.

SUBCHAPTER 2 — DISTILLATE SPECIAL FUELS

SECTION.

- 26-56-201. Imposition of tax — Exemptions.
- 26-56-202. Collection and payment of tax.
- 26-56-203. [Repealed.]
- 26-56-204. Licenses and bonds for suppliers and users, etc., generally.
- 26-56-205. [Repealed.]
- 26-56-206. Dealers’ licenses and bonds — Municipal taxes.
- 26-56-207. [Repealed.]
- 26-56-208. Suppliers’ and users’ reports — Computation and remittance of tax.
- 26-56-209. Records required — Invoices — Falsification of records.
- 26-56-210. Prima facie presumptions — Failure to keep records, issue invoices, or file reports — Tax, penalties, and interest.
- 26-56-211. [Repealed.]
- 26-56-212. Bonded and unbonded interstate users — Penalty for insufficient purchase.
- 26-56-213. Bonded and unbonded users — Knowing and inten-

SECTION.

- tional failure to pay tax or penalty.
- 26-56-214. Interstate users — Reports — Computation of tax and refunds.
- 26-56-215. Interstate users — Tax refund procedure.
- 26-56-216. Power to stop, investigate, and impound vehicles — Assessment of tax.
- 26-56-217. Separate storage tanks for taxable distillate special fuels and for tax-free storage.
- 26-56-218. Bulk sales.
- 26-56-219. Cargo tank to carburetor connections unlawful — Penalties.
- 26-56-220. Unlawful activities regarding operation of motor vehicles.
- 26-56-221. Distribution of taxes.
- 26-56-222. Disposition of funds collected under §§ 26-56-201, 26-56-214, and 27-14-601.
- 26-56-223. Definitions.
- 26-56-224. Fuel used for off-road purposes — Imposition of tax

SECTION.

- on dyed distillate special fuel.
- 26-56-225. Use of dyed distillate special fuel.
- 26-56-226. Penalty for improper use of dyed distillate special fuel.
- 26-56-227. Mixed dyed and undyed distillate special fuel — Additional penalty.

SECTION.

- 26-56-228. Authority of director.
- 26-56-229. Multiple violations.
- 26-56-230. Disposition of taxes, fees, and other revenues.
- 26-56-231. Rules and regulations.
- 26-56-232. Electronic reports — Electronic funds transfer.

Preambles. Acts 1968 (1st Ex. Sess.), No. 35 contained a preamble which read: "Whereas, Section 11 of Act 40 of the First Extraordinary Session of 1965 provides that in determining whether a distillate special fuel user is entitled to a refund or owes the state tax on distillate special fuels for the monthly reporting period, the number of gallons of distillate special fuel used in the State by such user shall be determined upon the basis of five (5) miles per gallon of fuel consumed; and

"Whereas, the Arkansas Supreme Court, in the case of *Larey, Commr. v. Continental Southern Lines, Inc., et al* (October 23, 1967) held that the prescribed method of computing the tax due on distillate special fuel by interstate users results in discrimination against certain interstate users and in favor of similar intrastate users and is therefore unconstitutional; and

"Whereas, it is believed that legislation is immediately necessary to prescribe the method of computing such tax liability or tax credit;

"Now, therefore ... "

Effective Dates. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 7: June 10, 1965. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing highway user tax laws of this State are inadequate to provide sufficient funds to properly construct, reconstruct and maintain the State highways, county roads and city streets of this State; that the existing investment of millions of dollars in public roads, streets and bridges is in jeopardy if additional funds are not provided; that increased motor vehicle traffic poses a serious threat to public safety unless immediate steps are taken to provide a more adequate and better maintained system of public roads,

streets and bridges; that the existing Special Motor Fuels Tax Law of this State is not conducive to proper enforcement, and immediate steps must be taken to provide for a more enforceable law in order to avoid tax evasion; and, that the immediate passage of this Act is necessary to correct the aforementioned circumstances. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1967, No. 138, § 2: July 1, 1967.

Acts 1967, No. 357, § 12: Mar. 15, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State levying a tax upon special motor fuels and prescribing the procedure for collecting the same are confusing and difficult of enforcement and that this Act is immediately necessary to clarify the laws levying the special motor fuel tax in order that said tax may be more effectively and efficiently enforced. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

Acts 1973, No. 445, § 26: July 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that immediate steps must be taken to provide additional State funds, and to allocate federal revenue sharing funds, for the construction of State highways which are essential to the public health, safety, and welfare and that the immediate passage of this Act is necessary in order that fiscal officials of the State may make plans to prepare for the collec-

tion of additional highway revenues effective from and after July 1, 1973. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1973."

Acts 1977, No. 51, § 5: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1977 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1977 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1977."

Acts 1977, No. 354, § 5: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in need of additional funds for the construction and maintenance of the State Highway System, the county roads, and municipal streets of this State; that the present laws governing the rate of tax to be computed upon the use of highways in this State with respect to the class of motor carriers covered by the provisions of this Act, do not adequately apportion to each class of user a mileage factor reasonably approximating the actual miles per gallon of fuel used in this State, and that by the enactment of this Act the State of Arkansas will obtain its fair and reasonable share of taxes due from said classes of motor carriers at the existing rates of tax, and will also gain the benefits of penalty for failure of motor carriers to comply with the motor fuel and distillate motor fuel tax laws in reporting and paying taxes upon which Arkansas motor fuel or distillate special fuel taxes have not been collected, and that the immediate passage of this Act is necessary to correct this situa-

tion. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1977."

Acts 1979, No. 437, § 8: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing highway user revenue sources do not provide for the adequate maintenance, repair, construction and reconstruction of state highways, county roads and city streets; that the motor vehicular traffic on the public highways and streets of this State makes it immediately necessary that additional funds be provided in order to finance adequate highway, road and street maintenance and construction programs; that the continued economic expansion and growth of this State will be jeopardized if an adequate system of public roads and streets is not provided; and that only by the immediate passage of this Act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July first of 1979."

Acts 1979, No. 764, § 5: July 1, 1979.

Acts 1980 (1st Ex. Sess.), No. 46, § 2: Jan. 30, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the increased tax liabilities accrued by interstate users of distillate special fuels through the lengthening of their tax reporting period from monthly to quarterly by Act 764 of 1979, the maximum surety bond required of interstate users may not adequately protect the state from revenue losses, it is necessary to the public peace, health, and safety that the maximum amount of such bonds be raised without delay. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 830, § 5: Mar. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the orderly administration of

the motor fuel tax laws is essential for the effective collection of these taxes; that some uncertainty exists regarding the sale of fuels to the United States and, that this Act is necessary to clarify this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 803, § 14: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that this Act makes various changes in the motor fuel tax law and the special motor fuel tax law; that such changes should go into effect at the beginning of the next fiscal year; and that unless this emergency clause is adopted, this Act may not go into effect until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1987."

Acts 1987, No. 985, § 17, as revised by Acts 1987 (1st Ex. Sess.), No. 20, § 7: Aug. 1, 1987. Acts 1987, No. 985, § 17 provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious danger of losing revenues which are necessary to provide adequate funding for essential needs of the citizens of this State and the provisions of this Act are necessary to avoid a substantial reduction in State revenues. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect on and after July 1, 1987." However, Acts 1987 (1st Ex. Sess.), No. 20, § 7 provided: "Act 985 of 1987 shall not be in effect on and after July 1, 1987, as stated in Section 17 of Act 985 of 1987 but shall be in full force and effect on and after August 1, 1987."

Acts 1987 (1st Ex. Sess.), No. 20, § 10: June 12, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that, for the purpose of administering the distillate special fuel tax to increase revenues necessary for essential services required by the citizens of this State, it is necessary to

remove the requirement of an exemption certificate for purchasers of distillate special fuel for off-road use. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 219, § 10: Feb. 22, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after the first day of the first month immediately following its passage and approval."

Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after the first day of the first month immediately following its passage and approval."

Acts 1993, No. 1026, § 9: Apr. 12, 1993. Emergency clause provided: "It is hereby

found and determined by the General Assembly that confusion exists among wholesalers of diesel fuel with respect to the reporting of inventories of diesel fuel for taxation purposes pursuant to the 'Special Motor Fuels Tax Law' and as a consequence diesel fuel tax revenues may be due the state at an earlier date than some wholesalers are remitting them. It is also found that such fuel tax revenues are greatly needed by the state in a timely manner as contemplated by the current diesel fuel tax laws in order that improvements may be expeditiously made to the State Highway System, the county roads, and the municipal streets. It is further found that the amendments contained in this act clarifying the 'Special Motor Fuels Tax Law' are necessary to correct the aforementioned problems. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 777, § 13: July 1, 1995. Emergency clause provided: "It is found and determined by the Eightieth General Assembly of the State of Arkansas that current laws allowing for a refund of tax paid on gasoline used for agricultural purposes is an inefficient and impractical method of providing tax relief to farmers; that current laws collecting motor fuel tax on liquefied petroleum gas based upon a flat fee is inequitable and imposes an undue burden on some taxpayers in this State; that current licensing and bonding requirements on motor fuel and distillate special fuel dealers are unnecessary and contrary to federal law; that this bill is designed to correct each of these deficiencies in current law and this Act should be effective on July 1, 1995. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect on and after July 1, 1995."

Acts 1995, No. 954, § 6: Apr. 6, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly that the United States Congress, through the passage of P.L. 103-66, has adopted legislation to curtail the illegal usage of diesel fuel that has not been taxed for federal taxation purposes

by requiring the bulk of off-road non taxed diesel fuels be dyed and by requiring the bulk of on-road taxable diesel fuels be undyed; that confusion has arisen in this State due to the federal dyeing requirements and usage of dyed and undyed diesel fuel and Arkansas laws, which are silent in the area of dyed diesel fuels; that the federal government is experiencing success in curtailing the abuse of nontaxable diesel fuels, due to the dyeing requirements, and this State should realize more fuel tax revenues by adopting mechanisms to curtail such abuses with regard to state fuel taxes by adopting similar requirements; that the adoption of such mechanisms will more equitably insure that highway users pay their fair share for the construction, reconstruction and maintenance of highways and bridges in the State, county and municipal highway, road, and street systems; and that the provisions of this Act are essential to the continued operation of State government. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after its passage and approval."

Acts 1999, No. 1028, § 9: Apr. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that existing highway user revenue sources do not provide sufficient funds for the necessary maintenance, repair, construction and reconstruction of state highways, county roads and municipal streets; that there is an immediate and urgent need for adequate state highways, county roads and municipal streets; that the continued economic expansion and growth of this state will be jeopardized if an adequate system of state highways, county roads and municipal streets is not provided; and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve these problems. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto

the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 685, § 4: Mar. 9, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need for the construction, reconstruction, and renovation of highways and roads comprising the federal interstate road system within the State of Arkansas; that a construction program cannot be accomplished without the issuance of bonds secured by federal highway assistance payments to finance the program; and that this act is immediately necessary in order to begin the process of facilitating the issuance of bonds. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 87, § 8: July 1, 2007: Emergency clause provided: "It is found and determined by the General Assembly that due to sharp increases in oil prices, traditional fuel taxation has become a

large percentage of the cost of production for Arkansas farmers thereby creating burdensome price increases for Arkansas consumers; that a change in the manner in which tax is paid on dyed diesel fuel is necessary to reduce the cost of production for Arkansas farmers; and that this act is necessary in order to provide tax relief as soon as reasonably possible. Therefore, an emergency is declared to exist and this act being necessary for the preservation of public peace, health, and safety shall become effective on July 1, 2007."

Acts 2007, No. 511, § 3: Mar. 27, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need for the construction, reconstruction and renovation of highways and roads comprising the U.S. Interstate system within the State of Arkansas and that such a program cannot be accomplished without the issuance of bonds secured by federal highway assistance payments to finance the program. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-56-201. Imposition of tax — Exemptions.

(a)(1)(A) There is levied an excise tax at the rate of nine and one-half cents (9½¢) per gallon on all distillate special fuel, except fuel utilized in propelling jet aircraft, sold or used in this state, or purchased for sale or use in this state.

(B) The additional levies provided in subdivision (a)(2) of this section and § 26-56-502 are specifically intended to apply to the taxes levied by this section and shall remain effective.

(2) In addition to the tax levied in subdivision (a)(1) of this section, there is levied an excise tax of one cent (1¢) for each gallon of distillate special fuel, as defined in § 26-56-102, sold or used in this state, or purchased for sale or use in this state, to be computed in the manner set forth in this section.

(b) The following are exempted from the tax levied by subsection (a) of this section:

(1) Sales to the United States Government;

(2) Sales to dealers, users, or off-road consumers for off-road use if and only if the fuel was delivered by the supplier into storage facilities clearly marked "NOT FOR MOTOR VEHICLE USE";

(3) Sales of distillate special fuel by a licensed supplier for export from the State of Arkansas when shipped by common carrier f.o.b. destination to any other state or territory or to any foreign country, or the export of distillate special fuel by a licensed supplier from the State of Arkansas to any other state or territory or to any foreign country, provided that satisfactory proof of actual exportation of all such distillate special fuel is furnished at the time and in the manner prescribed by the Director of the Department of Finance and Administration;

(4) Sales of distillate special fuel by a pipeline importer who has first received the distillate special fuel in this state or to a licensed first receiver in this state; and

(5) Sales for other than motor vehicle use in quantities of sixty gallons (60 gals.) or less.

(c) A licensed first receiver shall not sell untaxed distillate special fuel to another licensed first receiver or pipeline importer, unless a specific exemption is available under subsection (b) of this section.

(d)(1) In addition to the taxes levied on distillate special fuel in this section and § 26-56-502, there is levied an additional excise tax of four cents (4¢) per gallon upon all distillate special fuel subject to the taxes levied in this section and § 26-56-502.

(2) This additional excise tax shall be levied, collected, reported, and paid in the same manner and at the same time as is prescribed by law for the levying, collection, reporting, and payment of the other distillate special fuel taxes under Arkansas law.

(e)(1)(A) In addition to the taxes levied on distillate special fuel in this section and §§ 26-56-502 and 26-56-601, there is levied an excise tax of two cents (2¢) per gallon upon all distillate special fuel subject to the taxes levied in this section and §§ 26-56-502 and 26-56-601.

(B) Effective one (1) year after April 1, 1999, the additional tax levied by this subsection shall be increased by an additional two cents (2¢) per gallon.

(2) This additional excise tax shall be levied, collected, reported, and paid in the same manner and at the same time as is prescribed by law for the levying, collection, reporting, and payment of the other distillate special fuel taxes under Arkansas law.

(3) The additional tax levied by this subsection shall be taken into consideration and used when calculating tax credits or additional tax due under § 26-56-214.

(f) The additional taxes collected pursuant to this section shall be considered special revenues and shall be distributed as set forth in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., subject to any requirements for the repayment of bonds issued under the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., and

the Arkansas Interstate Highway Financing Act of 2007, § 27-64-401 et seq.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 1; 1967, No. 357, § 1; 1973, No. 445, § 1; 1979, No. 437, § 2; A.S.A. 1947, §§ 75-1241, 75-1269; Acts 1987, No. 985, §§ 6, 7; 1987 (1st Ex. Sess.), No. 20, §§ 1, 4-6; 1989, No. 821, § 10; 1991, No. 219, § 3; 1993, No. 618, §§ 2, 3; 1997, No. 1212, § 3; 1999, No. 1028, §§ 2, 4; 2005, No. 685, § 2; 2007, No. 511, § 2.

A.C.R.C. Notes. As enacted by Acts 1991, No. 219, § 3, subdivision (d)(1) of this section began: "On and after the effective date of this act,". Pursuant to Acts 1991, No. 219, § 10, the effective date of the act was March 1, 1991.

As enacted by Acts 1999, No. 1028, § 2, present subdivision (e)(1)(A) of this section began: "On and after the effective date of this act,". Pursuant to Acts 1999, No. 1028, § 9, the effective date of the act was April 1, 1999.

Publisher's Notes. Acts 1987, No. 985,

§ 1, provided: "Except as otherwise specifically provided in this Act, all terms and phrases used herein will have the same meaning as ascribed to them under Act 40 of 1965, First Extraordinary Session, as amended."

Acts 1999, No. 1028, § 1, provided: "This act may be referred to and cited as the 'Arkansas Distillate Special Fuels Excise Act of 1999' and the 'Motor Fuel Excise Tax Act of 1999'."

Amendments. The 2005 amendment deleted former (f)(2); redesignated former (f)(1) as present (f); and inserted "subject to any requirements ... § 27-64-301 et seq." in present (f).

The 2007 amendment substituted "and the Arkansas Interstate Highway Financing Act of 2007, § 27-64-401 et seq." for "and the Arkansas Interstate Highway Financing Act of 2005, § 27-64-301 et seq." at the end of (f).

26-56-202. Collection and payment of tax.

(a) The tax levied by this subchapter shall be collected and paid by suppliers.

(b) The tax levied by this subchapter shall be paid by an interstate user on distillate special fuel imported into this state by them as provided by §§ 26-56-211 [repealed] and 26-56-214.

(c) The tax levied by this subchapter shall be paid by any person who uses distillate special fuel in this state on which the tax levied in this subchapter has not been paid in accordance with the provisions of §§ 26-56-211 [repealed] and 26-56-214.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 3; 1967, No. 138, § 1; 1967, No. 357, § 8; A.S.A. 1947, § 75-1243; Acts 1987, No. 985, § 9.

Publisher's Notes. As to Acts 1987,

No. 985, § 1, see Publisher's Notes, § 26-56-201.

Section 26-56-211, referred to in this section, was repealed by Acts 1987, No. 803, § 11.

26-56-203. [Repealed.]

Publisher's Notes. This section, concerning tax credit options, was repealed by Acts 1987, No. 803, § 8. The section

was derived from Acts 1979, No. 909, §§ 1-3; A.S.A. 1947, §§ 75-1243.2 — 75-1243.4.

26-56-204. Licenses and bonds for suppliers and users, etc., generally.

(a)(1)(A) No person shall commence operations as a supplier, user, or off-road consumer of distillate special fuel without first procuring a license for that purpose from the Director of the Department of Finance and Administration. The license shall be issued and remain in effect until revoked as provided in this section.

(B)(i) Any person holding or applying for a supplier's license after August 1, 1987, shall make an election to operate either as a pipeline importer or first receiver. Once having made an election in writing filed with the director, the election will remain in force until such time as the supplier makes another written election to change the supplier's status.

(ii) The election and any change therein shall take effect on the first month following filing of the election.

(iii) The director may promulgate such forms and regulations as may be necessary to ensure uniformity with federal usage of exemption certificates issued for nonhighway diesel purchases.

(b)(1) Each application for a license or registration as a supplier, user, or off-road consumer of distillate special fuel, and each license or registration, shall have as a condition that the applicant and holder shall comply with the provisions of this subchapter.

(2)(A) Each annual registration as a user or off-road consumer shall have as a further condition that the applicant shall not deliver or permit delivery into the fuel supply tanks of motor vehicles any distillate special fuel which have been purchased tax-free by the applicant.

(B) A taxable use of distillate special fuel purchased tax-free by an applicant for an annual registration as a user or off-road consumer, in addition to the penal provisions prescribed in this subchapter, at the discretion of the director shall forfeit the right of the applicant to purchase distillate special fuel tax-free.

(c)(1) Every supplier shall file with the director a surety bond of not less than one and one-half ($1\frac{1}{2}$) times or one hundred fifty percent (150%) of the prior six (6) months average distillate special fuel tax due which is based upon the gallonage of distillate special fuel to be sold or distributed as shown by the application for a license if the applicant has not previously been engaged in the business of a supplier, or as shown by sales for the previous year if the applicant previously has been engaged in such business in this state. However, no bond shall be filed for less than one thousand dollars (\$1,000).

(2) If the director deems it necessary to protect the state in the collection of distillate special fuel taxes, the director may require any supplier to post a bond in an amount up to three (3) times or three hundred percent (300%) of the prior six (6) months average distillate special fuel tax due.

(3)(A) However, the director is authorized to waive the posting of bond by any licensed supplier organized and operating under the

laws of Arkansas and wholly owned by residents of this state who has been licensed for a period of at least three (3) years and who has not been delinquent in remitting distillate special fuel taxes during the three-year period immediately preceding application by the supplier for waiver of bond.

(B) If any supplier whose bond has been waived by the director as authorized in subdivision (c)(3)(A) of this section, subsequently becomes delinquent in remitting distillate special fuel taxes to the director, the director may require that the supplier post a bond in the amount required in this section, and the supplier shall not be eligible to petition for a waiver of bond for a period of three (3) years thereafter.

(d)(1) Each application of an interstate user for a license shall be accompanied by a surety bond of a surety company authorized to do business in this state, in favor of the director, satisfactory to the director, and in an amount to be fixed by the director of not less than one thousand dollars (\$1,000) nor more than fifty thousand dollars (\$50,000), guaranteeing the payment of any and all taxes, penalties, interest, attorney's fees, and costs levied by, accrued, or accruing under this subchapter.

(2) Any violation of this subchapter shall be cause for revocation of any license issued under this subchapter.

(e)(1) The bond or bonds shall be issued by a surety company qualified to do business in Arkansas, which shall be executed by the supplier or interstate user as the principal obligor and shall be made payable to the State of Arkansas as the obligee.

(2) The bond shall be conditioned upon the prompt filing of true reports and the payment by the supplier or interstate user to the director of any and all distillate special fuel taxes which are levied or imposed by the State of Arkansas, together with any and all penalties and interest thereon, and generally upon faithful compliance with the provisions of this subchapter.

(f)(1) In the event that liability upon the bond filed pursuant to this section by the supplier or interstate user with the director shall be discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if in the opinion of the director any surety on the bond shall have become unsatisfactory or unacceptable, then the director may require the filing of a new bond with a satisfactory surety in the same form and amount; failing which, the director shall immediately cancel the license of the supplier or interstate user.

(2) If a new bond shall be furnished, the director shall cancel the bonds for which the new bond shall be substituted.

(g) In the event that upon a hearing of which the supplier or interstate user shall be given five (5) days' notice in writing, the director shall decide that the amount of the existing bond is insufficient to ensure payment to the State of Arkansas of the amount of the tax and any penalties and interest for which said supplier or interstate user is or may at any time become liable, then the supplier or interstate user

upon written demand of the director shall immediately file an additional bond in the same manner and form and with a surety company thereon approved by the director in any amount determined by the director to be necessary to secure at all times the payment to the State of Arkansas of all taxes, penalties, and interest due under the provisions of this section, failing which, the director shall immediately cancel the license of the supplier or interstate user.

(h)(1) Any surety on any bond furnished as provided in this section shall be released and discharged from any and all liability to the State of Arkansas accruing on the bond after the expiration of sixty (60) days from the date upon which a surety shall have lodged with the director written request to be released and discharged. However, the request shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the sixty-day period.

(2) Upon receipt of notice of such request, the director shall promptly notify the supplier or interstate user who furnished the bond, and unless the supplier or interstate user on or before the expiration of the sixty-day period files with the director a new bond with a surety company satisfactory to the director in the amount and form as provided in this section, the director shall immediately cancel the license of that supplier or interstate user.

(3) If a new bond shall be furnished as provided in this section, the director shall cancel the bond for which the new bond shall be substituted.

(i) In lieu of furnishing a bond or bonds executed by a surety company as provided in this section, any supplier or interstate user may furnish a bond or other instrument in a form prescribed by the director of equal, full amount to the amount of the bond or bonds required by this section, which will provide security or payment of all amounts as described in this section and in compliance with all provisions of this subchapter.

(j)(1) A supplier may operate under his or her supplier's license as a dealer or as a user without securing a separate license, but he or she shall be subject to all other conditions, requirements, and liabilities imposed by this subchapter upon a dealer or a user.

(2) A licensed supplier, but not a dealer, may use distillate special fuel in motor vehicles owned or operated by him or her without securing a separate license as a user, subject to all conditions, requirements, and liabilities imposed herein upon a user.

(k)(1) Any violation of this subchapter shall be cause for revocation of any license issued pursuant to this subchapter.

(2)(A) Should his or her license be revoked, any supplier or user may bring an action against the director in the circuit court of the county of his or her domicile within fifteen (15) days of the date of revocation to determine whether or not the supplier or user has in fact violated any of the provisions of this chapter.

(B) If the circuit court determines that the provisions of the law have been violated by the supplier or user, it shall affirm the director's action in revoking the license.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, §§ 7, 8; 1967, No. 357, § 2; 1980 (1st Ex. Sess.), No. 46, § 1; A.S.A. 1947, §§ 75-1247, 75-1248; Acts 1987, No. 985, § 12; 1987 (1st Ex. Sess.), No. 20, § 8; 1993, No. 618, §§ 4, 5; 1993, No. 1026, § 2; 1995, No. 777, §§ 4-6; 1997, No. 1212, §§ 4, 5.

Publisher's Notes. As to Acts 1987, No. 985, § 1, see Publisher's Notes, § 26-56-201.

Acts 1993, No. 1026, § 5, provided: "The Director of the Department of Finance and Administration is hereby authorized to make and promulgate all rules and regulations deemed necessary or desirable by that Director in order that the amendments contained in this act be effectuated as soon as practicable following the passage and approval of this act."

26-56-205. [Repealed.]

Publisher's Notes. This section, concerning dealers' licenses and bonds generally, was repealed by Acts 1995, No. 777, § 7. The section was derived from Acts

1965 (1st Ex. Sess.), No. 40, ch. 2, § 7; 1967, No. 357, § 3; A.S.A. 1947, § 75-1247; Acts 1993, No. 344, § 1.

26-56-206. Dealers' licenses and bonds — Municipal taxes.

Nothing in §§ 26-56-204 and 26-56-205 [repealed] shall be construed so as to prevent the collection of any privilege or occupation taxes by any municipality of this state for engaging in the business of a dealer within the limits of the municipality.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 7; 1967, No. 357, § 3; A.S.A. 1947, § 75-1247.

Publisher's Notes. Section 26-56-205 referred to in this section was repealed by Acts 1995, No. 777, § 7.

26-56-207. [Repealed.]

Publisher's Notes. This section, concerning sales tickets, was repealed by Acts 1995, No. 777, § 7. The section was derived from Acts 1965 (1st Ex. Sess.), No.

40, ch. 2, § 7; 1967, No. 357, § 3; 1968 (1st Ex. Sess.), No. 35, § 2; A.S.A. 1947, §§ 75-1247, 75-1251.1.

26-56-208. Suppliers' and users' reports — Computation and remittance of tax.

(a)(1) On or before the twenty-fifth day of each calendar month on forms prescribed by the Director of the Department of Finance and Administration, every supplier shall file with the director a report accounting for the distillate special fuel handled during the preceding month.

(2) The supplier shall file supporting documents necessary to assure accurate reporting.

(3) The report shall include the following:

(A) An itemized statement of the number of gallons of distillate special fuel received during the next-preceding calendar month by the supplier;

(B) An itemized statement of the number of gallons of distillate special fuel received or sold during the next-preceding calendar month and entitled to deduction or exemption under the provisions of this subchapter;

(C) The total number of gallons of dyed distillate special fuel sold to users during the next-preceding calendar month, but the report shall not contain an itemized listing identifying each purchaser; and

(D) Such other documents as the director requires.

(b)(1) When filing the report and paying the tax to the director as required in this section, the supplier shall be entitled to deduct from the total number of gallons upon which the tax levied under this chapter is due, the number of gallons:

(A) Purchased during the preceding calendar month from another licensed supplier and upon which the tax levied under this chapter was paid at the time of that purchase; and

(B) Lost due to fire, flood, storm, theft, or other cause beyond the supplier's control, other than through evaporation.

(2) The deduction for the loss may be included in the report filed for the month in which the loss occurred or in any subsequent report filed within a period of one (1) year.

(c)(1) On forms prescribed by the director, every pipeline company, water transportation company, and common carrier transporting distillate special fuel to points within Arkansas shall report under oath to the director all deliveries of distillate special fuel so made to points within Arkansas.

(2)(A) The report shall cover a monthly period and shall be submitted within twenty-five (25) days after the close of the month covered by the report.

(B) The report shall show:

(i) The name and address of each person to whom deliveries of distillate special fuel have actually been made;

(ii) The name and address of each originally named consignee if distillate special fuel has been delivered to anyone other than the originally named consignee;

(iii) The point of origin, point of delivery, and date of delivery, as well as the name of the boat, barge, or vessel;

(iv) The number of gallons contained in the vessel, if shipped by water;

(v) The license number of each tank truck;

(vi) The number of gallons contained in the tank if transported by motor truck;

(vii) The point of origin, the name and address of the person or terminal to whom the delivery was made, the date of the delivery, and the quantity of distillate special fuel delivered if shipped by pipeline company; and

(viii) The manner and quantities if delivered by other means when such delivery is made.

(C) The report shall also show such additional information relative to a shipment of distillate special fuel as the director may require.

(d)(1) Every terminal purchasing or otherwise acquiring distillate special fuel by pipeline and selling, using, or otherwise disposing of the distillate special fuel for delivery in Arkansas and not required by a provision of this subchapter to be licensed as a supplier in distillate special fuel shall file a statement setting forth the:

(A) Name under which the terminal is transacting business within the State of Arkansas and the location with the street number address of the terminal's principal office or place of business within the state; and

(B) Name and address of the owner of the terminal, names and addresses of the partners if the terminal is a partnership, or names and addresses of the principal officers if the terminal is a corporation or association.

(2) On or before the twenty-fifth day of each calendar month on forms prescribed by the director, the terminal shall report to the director all purchases or other acquisitions and sales or other disposition of distillate special fuel during the next-preceding calendar month, which report shall include the following:

(A) Beginning inventories in gallons of distillate special fuel in storage;

(B) Ending inventories in gallons of distillate special fuel in storage;

(C) Withdrawals of distillate special fuel in gallons from the pipeline outlet resulting in additions of distillate special fuel to storage, including the name of the supplier licensed as an importer who requested the placement of the distillate special fuel into storage; and

(D) Removals of distillate special fuel from storage, specifically including:

(i) Bill of lading numbers which represent physical movements of the distillate special fuel;

(ii) The date of each removal;

(iii) The quantity in gallons of distillate special fuel so removed;

(iv) The person who had the distillate special fuel available for that particular removal; and

(v) The person possessing a license from the director who requested the removal of the distillate special fuel from that storage.

(3) When any terminal purchasing or otherwise acquiring distillate special fuel by pipeline and selling or otherwise disposing of the distillate special fuel for delivery in Arkansas and not required by a provision of this subchapter to register as a supplier in distillate special fuel, fails to submit the terminal's monthly report to the director by the twenty-fifth day of each calendar month or when the terminal fails to submit in the monthly report the data required by this subchapter, the

terminal shall be guilty of a violation and shall be fined an amount not greater than one hundred dollars (\$100) for the first offense and shall be fined an amount not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each subsequent offense.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 8; 1967, No. 497, § 1; A.S.A. 1947, § 75-1248; Acts 1987, No. 803, § 6; 1987, No. 985, §§ 8, 13, 14; 1993, No. 1026, § 3; 1993, No. 1029, §§ 5, 6; 1997, No. 1212, § 6; 2001, No. 777, § 1; 2005, No. 1994, § 176; 2007, No. 827, § 226.

Publisher's Notes. As to Acts 1987, No. 985, § 1, see Publisher's Notes, § 26-56-201.

Acts 1993, No. 1026, § 5, provided: "The Director of the Department of Finance and Administration is hereby authorized to make and promulgate all rules and regulations deemed necessary or desirable by that Director in order that the amendments contained in this act be effectuated as soon as practicable following the passage and approval of this act."

Acts 1993, No. 1029, § 7, provided: "The

Director of the Department of Finance and Administration is hereby directed, with the advise and concurrence of the Director of Highways and Transportation, or his designee, to make and promulgate all rules and regulations deemed necessary or desirable by such Directors in order that the amendments contained in this Act be effectuated by July 1, 1993."

Amendments. The 2005 amendment redesignated former (a)(1) and (a)(1)(A)-(D) as present (a) and (a)(1)-(4); and substituted "violation" for "misdemeanor" in (d)(3).

The 2007 amendment, in (d)(1), combined former (A) and (B) as present (A) and former (C) and (D) as present (B), inserted "of the terminal" in present (B), and made related and stylistic changes.

26-56-209. Records required — Invoices — Falsification of records.

(a) Every person required by law to secure a license under any motor fuel or distillate special fuel tax law shall keep records in the time and manner and subject to inspection and audit as required by the Arkansas Tax Procedure Act, § 26-18-101 et seq., for each place of business or place of storage in Arkansas, including a complete record of all distillate special fuel purchased or received and sold, delivered, or used by him or her showing for each purchase, receipt, sale, delivery, or use:

(1) The date;

(2) The name and address of the seller or of the persons from whom received, and if sold or delivered in bulk quantities, the name and address of the purchaser or recipient;

(3) An accurate record of the number of gallons of each product used for taxable purposes with quantities measured by a meter; and

(4) Inventories of distillate special fuel on hand at the end of each month at bulk storage facilities.

(b)(1) For each bulk sale and delivery of distillate special fuel, whether or not subject to tax under this subchapter, the record required shall include an invoice with serial numbers printed thereon showing the name and address of both the supplier and the purchaser, and the complete information set out in subsection (a) of this section for each such sale, one (1) counterpart of which shall be delivered to the purchaser and another counterpart kept by the supplier or dealer for the period of time and purpose provided in subsection (a) of this section.

(2)(A) For each delivery of distillate special fuel into the fuel supply tank of a motor vehicle, the required record shall include a serially-numbered invoice issued in not less than duplicate counterparts on which shall be printed or stamped with a rubber stamp the name and address of the supplier, dealer, or user making such delivery and on which shall be shown, in spaces to be provided on that invoice, the date of delivery, the number of gallons and kind of distillate special fuel so delivered, the total mileage recorded on the speedometer or hub meter of the motor vehicle into which delivered, and the motor vehicle registration number of the motor vehicle.

(B) The invoice shall reflect that the tax has been paid or accounted for on each of the products delivered.

(C)(i) One (1) counterpart of the invoice shall be kept by the supplier, dealer, or user making such delivery as a part of his or her record and for the period of time and purposes provided in subsection (a) of this section.

(ii) Another counterpart shall be delivered to the operator of the motor vehicle and carried in the cab compartment of the motor vehicle for inspection by the Director of the Department of Finance and Administration or his or her representatives until the fuel it covers has been consumed.

(c)(1) Every person who operates a motor vehicle that is equipped to use motor fuels taxable under the Motor Fuel Tax Law, § 26-55-201 et seq., and distillate special fuel interchangeably in the propulsion of the motor vehicle shall carry in the cab compartment of the motor vehicle for inspection by the director or his or her representative, not only the counterpart of the serially-numbered invoice required under subsection (b) of this section for the delivery of distillate special fuel into the fuel supply tanks of the motor vehicle but also an invoice or receipt from the seller for each delivery into the fuel supply tanks of the motor vehicle of motor fuels taxable under the Motor Fuel Tax Law, § 26-55-201 et seq., which latter invoice or receipt shall show the same information as to date of delivery, quantity, speedometer or hub meter mileage, and motor vehicle registration number as is required for the invoice covering distillate special fuel.

(2) These invoices shall be carried with the motor vehicle until the kinds of fuels covered thereby have been consumed.

(d)(1) On all deliveries of distillate special fuel to a user by common or contract carriers, the shipper shall stamp on the manifest or bill of lading in letters not less than one-quarter inch (¼") high "TAX PAID" whenever the tax levied under this subchapter, other than the tax levied by § 26-56-224(b)–(f), has been paid, and "NOT FOR MOTOR VEHICLE USE" whenever the tax levied under this subchapter has not been paid or if the fuel is dyed distillate special fuel.

(2) It shall be a violation of this chapter for any driver for a carrier to deliver distillate special fuel covered by a manifest or bill of lading stamped "NOT FOR MOTOR VEHICLE USE" into a tank marked "TAX-PAID SPECIAL FUELS".

(e) The willful issuance of any invoice, bill of sale, or receipt which is false, untrue, or incorrect in any material particular, or the alteration or changing except for errors, or forging any such invoice, bill of sale, or receipt, or any duplicate of any such receipt pertaining to distillate special fuel shall constitute a violation of this chapter.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 6; A.S.A. 1947, § 75-1246; Acts 1987, No. 985, § 11; 1993, No. 1026, § 4; 2007, No. 87, § 5.

Publisher's Notes. As to Acts 1987, No. 985, § 1, see Publisher's Notes, § 26-56-201.

Acts 1993, No. 1026, § 5, provided: "The Director of the Department of Finance and Administration is hereby authorized to make and promulgate all rules and

regulations deemed necessary or desirable by that Director in order that the amendments contained in this act be effectuated as soon as practicable following the passage and approval of this act."

Amendments. The 2007 amendment, in the first sentence of (d), inserted "other than the tax levied by § 26-56-224(b)-(f)" and inserted "or if the fuel is dyed distillate special fuel."

26-56-210. Prima facie presumptions — Failure to keep records, issue invoices, or file reports — Tax, penalties, and interest.

(a) Any supplier, dealer, or user who fails to keep the records, issue the invoices, or file the reports required by this subchapter shall be prima facie presumed to have sold, delivered, or used for taxable purposes all distillate special fuel shown by a verified audit by the Director of the Department of Finance and Administration or any authorized representative, to have been delivered to such supplier, dealer, or user and unaccounted for at each place of business or place of storage from which distillate special fuel is sold, delivered, or used for any taxable purposes.

(b)(1) The director is authorized to fix or establish the amount of taxes, penalties, and interest due the State of Arkansas from such records of deliveries or from any records or information available to the director, and if the tax claim as developed from that procedure is not paid, the claim and any audit made by the director or an authorized representative, or any report filed by such supplier, dealer, or user, shall be admissible in evidence in any suit or judicial proceedings filed by the director and shall be prima facie evidence of the correctness of said claim or audit.

(2) However, the prima facie presumption of the correctness of the claim may be overcome by evidence adduced by the supplier, dealer, or user.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 10; A.S.A. 1947, § 75-1250.

CASE NOTES

ANALYSIS

Purpose.
Audits.
Burden of Proof.
Presumptions.

Purpose.

This section is intended to require dealers to preserve their records and invoices so that the state can verify the payment of motor fuel taxes, if such taxes are due. *Ragland v. Gulf Oil Corp.*, 288 Ark. 185A, 705 S.W.2d 15 (1986).

Audits.

The only purpose of the audit requirement in this section is to provide an approved method to determine the quantity of fuel delivered to a dealer before it can be charged with that amount under the statute. *Ragland v. Gulf Oil Corp.*, 288 Ark. 182, 703 S.W.2d 449 (1986).

Where an audit of oil company established the delivery of 370,312 gallons, for which distributor could not account, and where the amount of fuel delivered to the distributor was never in dispute, and was effectively waived by distributor through-

out the proceedings, the point was equally waived for purposes of this section; hence, the contention that this section required an audit before the presumption could arise was without merit. *Ragland v. Gulf Oil Corp.*, 288 Ark. 182, 703 S.W.2d 449 (1986).

Burden of Proof.

The burden is not on the state to show what use was made of the fuel when the dealer fails to keep the records required under the law; rather, the burden is on the dealer to show that the sales were not for taxable purposes. *Ragland v. Gulf Oil Corp.*, 288 Ark. 185A, 705 S.W.2d 15 (1986).

Presumptions.

This section creates a prima facie presumption that the fuel at issue was used for taxable purposes where distributor admittedly destroyed its records. *Ragland v. Gulf Oil Corp.*, 288 Ark. 182, 703 S.W.2d 449 (1986).

This section requires proof of specific transactions not subject to the tax in order to rebut the presumption of liability. *Ragland v. Gulf Oil Corp.*, 288 Ark. 185A, 705 S.W.2d 15 (1986).

26-56-211. [Repealed.]

Publisher's Notes. This section, concerning unlicensed importers, was repealed by Acts 1987, No. 803, § 11. The section was derived from Acts 1965 (1st

Ex. Sess.), No. 40, ch. 2, §§ 12, 13; 1967, No. 357, §§ 5, 7; A.S.A. 1947, §§ 75-1252, 75-1253.

26-56-212. Bonded and unbonded interstate users — Penalty for insufficient purchase.

Any distillate special fuel user who is a bonded or unbonded interstate distillate fuel user operating Class B vehicles as described in § 26-56-214, who upon arriving at a point of exit from this state shall have failed to purchase sufficient gallons of distillate special fuel in this state and pay the tax thereon as required by law, as determined in this subchapter, calculated at the rate of four miles per gallon (4 MPG) for each mile traveled in this state:

(1) The unbonded distillate special fuel user shall pay a penalty of four cents (4¢) per gallon on each gallon of distillate special fuel which he or she failed to buy in this state, in addition to paying the tax on the distillate special fuel at the point of exit from this state upon which the tax has not been paid; and

(2) Any bonded distillate special fuel user shall pay a penalty of four cents (4¢) per gallon of the total number of gallons of distillate special fuel which he or she failed to buy in this state during each report period, in addition to paying the tax upon the distillate special fuel upon which tax has not been paid.

History. Acts 1977, No. 354, § 2; A.S.A. § 4, provided in part that the act would be supplemental to the Special Motor Fuels 1947, § 75-1187.1.

Publisher's Notes. Acts 1977, No. 354, Tax Law, § 26-56-101 et seq.

26-56-213. Bonded and unbonded users — Knowing and intentional failure to pay tax or penalty.

Any bonded or unbonded distillate special fuel user who knowingly and intentionally fails to pay the Arkansas gallonage tax due the State of Arkansas on motor fuel and distillate special fuel used on the highways of this state as required in § 26-56-214 with respect to distillate special fuel tax used on Class B vehicles, and knowingly and intentionally fails to pay the penalty on the fuel on which the Arkansas distillate special fuel tax has not been paid, as required in § 26-56-214, shall be guilty of a Class A misdemeanor and upon conviction shall be punished in the manner provided by law.

History. Acts 1977, No. 354, § 3; A.S.A. § 4, provided in part that the act would be supplemental to the Special Motor Fuels 1947, § 75-1187.2.

Publisher's Notes. Acts 1977, No. 354, Tax Law, § 26-56-101 et seq.

26-56-214. Interstate users — Reports — Computation of tax and refunds.

(a) Whenever an interstate user of distillate special fuel who is a bonded user of distillate special fuel in all states in which he or she operates has exportations in excess of importations of tax-paid distillate special fuel in the fuel supply tanks of motor vehicles which distillate special fuel was delivered by a supplier into bulk storage facilities of the user within the State of Arkansas, the supplier may make a refund or allow a credit for the amount of the tax upon such excess upon approval by the Director of the Department of Finance and Administration of a statement from the user to the effect that the tax-paid distillate special fuel was exported.

(b)(1) For the purpose of determining whether an interstate distillate special fuel user owes special motor fuel tax or is entitled to a credit or refund, the licensed interstate distillate special fuel user shall file a quarterly report on or before the last day of the month following the end of each calendar quarter.

(2) If it shall be determined by the quarterly report that the interstate user has used distillate special fuel in this state in excess of the number of gallons of the distillate special fuel upon which the Arkansas tax had been paid, the interstate user shall remit to the director, at the time of filing the report, an excise tax of eighteen and one-half cents (18½¢) per gallon of the excess gallonage used.

(3) If it shall be determined that the interstate user has purchased more gallons of distillate special fuel in this state than he or she has used in this state, then the interstate user shall be entitled to a credit or refund of eighteen and one-half cents ($18\frac{1}{2}\text{¢}$) per gallon of the excess gallonage purchased in the state.

(c) The quarterly report required by this subchapter shall be filed on or before the last day of the month following the end of each calendar quarter and shall be made on forms prescribed by the director and shall include such information as the director may require.

(d)(1) For the purpose of determining whether a distillate special fuel user owes tax or is entitled to a credit or refund as provided in subsection (b) of this section, the distillate special fuel user shall file with the director a report showing the quantities of special motor fuels used in this state during the preceding calendar quarter. This report shall be due on or before the last day of the month following the end of each calendar quarter.

(2) If it shall be determined by the quarterly report filed with the director that the distillate special fuel user has used more gallons of special motor fuel in this state than the special motor fuel tax due thereon has been paid, the distillate special fuel user shall remit to the director an excise tax of eighteen and one-half cents ($18\frac{1}{2}\text{¢}$) per gallon of special motor fuel.

(3) Distillate special fuel users may not take credit on reports at a tax rate in excess of that actually paid.

(e)(1) For the purpose of determining whether a distillate special fuel user owes tax or is entitled to a credit or refund, the distillate special fuel user shall determine the average miles per gallon of fuel used. The average miles per gallon shall be determined by dividing total miles traveled in all jurisdictions by the total gallons of fuel used in all jurisdictions. The distillate special fuel user shall then determine the total amount of fuel used within the State of Arkansas by dividing the total number of miles traveled within the State of Arkansas by the average miles per gallon.

(2) The number of gallons of distillate special fuels upon which the tax has been paid by an interstate user shall be determined from the form obtained by the interstate user from a dealer or licensed bulk supplier on forms containing information prescribed by § 26-56-209.

(3) The taxpayer's tax liability shall be calculated by multiplying the number of gallons of fuel used within the State of Arkansas by eighteen and one-half cents ($18\frac{1}{2}\text{¢}$) per gallon. A taxpayer shall be entitled to credits against his or her tax liability for tax-paid fuel purchased within the State of Arkansas.

(f)(1) Any licensed interstate user who fails to maintain adequate mileage or fuel records, for the purpose of determining the amount the interstate user owes the State of Arkansas for tax on distillate special fuel used in this state as provided in this section, the number of gallons of distillate special fuel used in this state shall be determined by an assessment based on the following mileage factors per gallon of distil-

late special fuel as compared to the appropriate class of vehicle set out in subdivision (f)(2) of this section.

(2) For the purposes of this section:

(A) All automobiles, except buses, with a capacity of less than eight (8) passengers shall be deemed to be Class A vehicles;

(B) All truck-type vehicles, except buses, with a factory rating and gross loaded weight of less than twenty-two thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class B vehicles;

(C) All other vehicles, except buses, with a factory rating in excess of twenty-two thousand five hundred pounds (22,500 lbs.), or whose total gross loaded weight exceeds twenty-two thousand five hundred pounds (22,500 lbs.), shall be deemed to be Class C vehicles; and

(D) All buses rated and licensed as such shall be deemed to be Class D vehicles.

(3) The mileage factor per gallon of distillate special fuel for:

(A) Class A vehicles shall be twelve (12) miles;

(B) Class B vehicles shall be eight (8) miles;

(C) Class C vehicles shall be five (5) miles; and

(D) Class D vehicles shall be six (6) miles.

(4) These mileage factors shall be utilized in conjunction with the Arkansas mileage as determined through an audit and based upon the best records available regardless of source.

(g) For the purposes of determining the amount any unlicensed or unbonded user owes the State of Arkansas for tax on distillate special fuel used in this state, only the above mileage factors per gallon of distillate special fuel for the applicable vehicles shall be utilized.

(h)(1) If a quarterly report of a distillate special fuel user results in a net credit, the distillate special fuel user may elect to have the credit carried forward and applied against the special motor fuel tax due for the succeeding eight (8) quarters or until the credit is completely used, whichever occurs first. In the alternative, a taxpayer who is entitled to a net credit on his or her quarterly fuel use tax report may elect to have the amount of credit refunded to him or her.

(2) A distillate special fuel user who has a total tax liability for special motor fuel tax during the previous calendar year of less than one hundred dollars (\$100) upon application to the director may obtain permission to report his or her motor fuel tax liability on an annual basis. The annual report shall be due on or before the last day of the month following the end of each fiscal year.

(i)(1) The director shall prescribe the appropriate forms necessary for the administration of this subchapter.

(2) The director may make appropriate rules and regulations necessary to ensure the accurate reporting of the special motor fuel tax.

History. Acts 1965 (1st Ex. Sess.), No. 803, §§ 5, 7; 1991, No. 364, § 3; 1991, 40, ch. 2, § 11; 1967, No. 357, §§ 4, 9; No. 382, § 3; 1995, No. 777, § 8.
1968 (1st Ex. Sess.), No. 35, § 1; 1977, No. 354, § 1; 1979, No. 764, § 2; A.S.A. 1947, § 5 as amended by identical Acts 1991, §§ 75-1187, 75-1251, 75-1251n; Acts 1987, Nos. 1040 and 1239, §§ 5 and 6, and Acts

1991, No. 382, § 5, as amended by Acts 1991, identical acts Nos. 1040 and 1239, §§ 7 and 8, provided:

"(a) All of the additional taxes, fees, penalties and interest collected under the provisions of this subchapter and §§ 26-55-710, 26-56-214, and 26-56-304 shall be classified as special revenues and shall be deposited in the State Treasury. After deducting therefrom the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

"(A) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

"(B) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

"Seventy percent (70%) of the amount thereof to a special account in the State Highway and Transportation Department Fund to be designated the '1991 Highway Construction and Maintenance Account'.

"(b) The funds in the 1991 Highway Construction and Maintenance Account shall be held, managed, and used in the

same manner and for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., excluding, however, § 27-70-206;

"(c) Provided that, in keeping with the spirit of section 105 of Public Law 97-424 and the Arkansas State Highway Commission's goals for encouraging the participation of disadvantaged business enterprises in entering into and performing contracts with the commission, including the purchasing of supplies and equipment by the commission and for the construction, reconstruction, and maintenance of highways and bridges in the state highway system, the Arkansas State Highway Commission is authorized to expend up to ten percent (10%) of the total funds and revenues available and disbursed to the commission pursuant to this section for the purposes of achieving those goals."

Publisher's Notes. Acts 1977, No. 354, § 4, provided in part that the act would be supplemental to the Special Motor Fuels Tax Law, § 26-56-101 et seq.

Cross References. Tax refund procedure for taxes paid on motor fuel and on special motor fuels by interstate users, § 26-55-714.

RESEARCH REFERENCES

A.L.R. Construction and operation of statutory time limit for filing claim for state tax refund. 14 A.L.R.6th 119.

CASE NOTES

Constitutionality.

Application of the formula of five miles per gallon to interstate bus companies that actually obtain an average of 6.3 miles per gallon of distillate fuel was arbitrary, unreasonable, discriminatory, and unconstitutional, violating Ark. Const., Art. 2, § 3, and Art. 16, § 5, and

U.S. Const., Art. 4, § 2, cl. 1, and Amend. 14, § 1, and constitutes an undue burden on interstate commerce in violation of U.S. Const., Art. 1, § 8, cl. 3. *Larey v. Continental Southern Lines, Inc.*, 243 Ark. 278, 419 S.W.2d 610 (1967) (decision prior to 1968 amendment).

26-56-215. Interstate users — Tax refund procedure.

(a)(1) The Director of the Department of Finance and Administration shall quarterly estimate the amount necessary to pay refunds to interstate users of special motor fuels who are entitled to refunds with respect to special motor fuel taxes paid in this state as authorized in § 26-56-214, and upon certification by the director, the Treasurer of State shall transfer from the gross amount of special motor fuel taxes collected each month the amount so certified and shall credit the

amount to the Interstate Motor Fuel Tax Refund Fund, which is established on the books of the State Treasury, from which the Department of Finance and Administration shall make refunds as provided by law.

(2) The transfers from the gross motor fuel taxes and special motor fuel taxes collected each month shall be after deducting allowances for bad checks or claims but before making any other distribution as provided by law.

(b) All warrants drawn against the fund which are not presented for payment within one (1) year of issuance shall be void.

(c) Neither the director nor any member or employee of the department shall be held personally liable for making any refund by reason of a fraudulent claim being filed as a basis for such refund.

(d) The director is authorized to promulgate rules and regulations and to prescribe the necessary forms required for the administration of claims for tax refunds from interstate users of special motor fuels in this state as authorized by law, which rules and regulations shall be in conformance with the following requirements:

(1) The director shall first determine, with respect to each refund claim filed, that the bond of the interstate user is adequate to compensate the State of Arkansas for any losses with respect to the recovery of any refunds illegally claimed by the interstate user, and the director may require the increase of the bond if the director determines it to be inadequate before approving any such claim for refund;

(2) Each interstate user of motor fuels and special motor fuels claiming refunds shall maintain adequate records to substantiate each claim for refund, and the director may reject any claim for refund if the director determines the applicant has not maintained adequate records or has not conformed to the rules and regulations of the department in filing the claim therefor;

(3) Each claim for refund must be upon the request of the interstate user, which shall be verified by the interstate user as to its accuracy and validity;

(4)(A) Each quarterly report filed by a licensed interstate user of special motor fuels with the department shall reflect thereon the amount of special motor fuels purchased for use in Arkansas during the quarter, the number of gallons of special motor fuels upon which taxes are due the State of Arkansas for the quarter, and the excess gallonage upon which the interstate user is entitled to refunds.

(B) At the end of each calendar quarter, the licensed interstate user may make application for refund with respect to the number of gallons of special motor fuels upon which the special motor fuels taxes have been paid during the calendar quarter for which the interstate user is entitled to refund.

History. Acts 1977, No. 51, §§ 2, 3; 1983, No. 830, § 3; A.S.A. 1947, §§ 75-1155.1, 75-1155.2; Acts 1987, No. 803, §§ 2-4.

Publisher's Notes. Acts 1977, No. 51, §§ 2, 3, as amended, are also codified as § 26-55-714.

26-56-216. Power to stop, investigate, and impound vehicles — Assessment of tax.

(a) In order to enforce the provisions of this subchapter, the Director of the Department of Finance and Administration or his or her authorized representative is empowered to stop any motor vehicle which appears to be operating with distillate special fuel for the purpose of examining the invoices and for such other investigative purposes reasonably necessary to determine whether the taxes imposed by this subchapter have been paid, or whether the motor vehicle is being operated in compliance with the provisions of this subchapter.

(b) If after examination or investigation it is determined by the director or his or her authorized representative that the tax imposed by this subchapter has not been paid with respect to the fuels being used in the motor vehicle, the director or his or her representative shall immediately assess the tax due, together with the penalty hereinafter provided, to the owner of the motor vehicle, and give the owner written notice of the assessment by handing it to the driver of the motor vehicle.

(c) The director or his or her representative is empowered to impound any motor vehicle found to be operating in violation of this chapter by a person other than one who has furnished the bond required of users by § 26-56-204(c) until such time as any tax assessed as provided herein has been paid.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 9; A.S.A. 1947, § 75-1249.

26-56-217. Separate storage tanks for taxable distillate special fuels and for tax-free storage.

(a)(1) All users except suppliers of distillate special fuel who maintain their own storage tanks in the state are required to have a separate storage tank for taxable distillate special fuel other than dyed distillate special fuel, which tanks are to be physically separate and apart from any other tanks or fueling units, and to indicate it by placing thereon in a conspicuous place the words "TAX-PAID FUELS" in letters not less than five inches (5") high.

(2) Suppliers are required to collect the tax on all distillate special fuel delivered into those tanks.

(b)(1) All users who have facilities for storing distillate special fuel intended for other than highway use and which facilities are suitable to fuel motor vehicles using distillate special fuel, except those facilities used for residential purposes, shall mark the storage facilities with the words "NOT FOR MOTOR VEHICLE USE" in letters not less than five inches (5") high, and suppliers may deliver into such storage facilities without collecting the tax levied in this subchapter other than the tax levied by § 26-56-224(b)–(f).

(2)(A) If users do not provide such tanks, then all distillate special fuel delivered by a supplier into storage tanks suitable for fueling motor vehicles become taxable, provided, however, that any city or

county using a computerized fuel dispensing system that will automatically record each transaction as to pump operator and specific motor vehicle to which the distillate special fuel is dispensed may have taxable and nontaxable distillate special fuel delivered into the same tank.

(B) The distributor shall collect the tax on the taxable portion of each purchase based upon the sworn statement of the purchaser as to the amount of taxable distillate special fuel purchased.

(C) Each city or county shall file a report with the Director of the Department of Finance and Administration accounting for the taxable and nontaxable distillate special fuel used and miles driven by each motor vehicle which requires taxable distillate special fuel in such a manner, at such time, and on such forms as shall be prescribed by the director.

(D) The director may promulgate regulations to establish a system to periodically reconcile the taxable distillate special fuel purchased and actual taxable distillate special fuel used by the city or county.

(3) However, when a user has one (1) or more storage tanks used for the storage of distillate special fuel within the meaning of this chapter, and the user does not own, possess, lease, or otherwise operate a motor vehicle licensed or required to be licensed for use upon the public highway and capable of using said distillate special fuel, the requirement for marking such storage facilities "NOT FOR MOTOR FUEL USE" shall be waived.

(c) Nothing in this section shall be construed to amend or change the meaning of any other section of this chapter.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 4; 1973, No. 307, §§ 1, 2; A.S.A. 1947, §§ 75-1244, 75-1244.1; Acts 1991, No. 348, § 1; 2007, No. 87, §§ 6, 7.

Amendments. The 2007 amendment

inserted "other than dyed distillate special fuels" in (a)(1); and added "other than the tax levied by § 26-56-224(b)-(f)" at the end of (b)(1).

26-56-218. Bulk sales.

(a) It shall be unlawful to make tax-free bulk sales of distillate special fuel to any user, dealer, or off-road consumer who has not filed with his or her supplier an annual registration for purchases of tax-free distillate special fuel.

(b) However, a sale shall be lawful if:

(1) At the time of sale and delivery, the supplier obtains from the purchaser a fully executed annual registration for purchases of tax-free distillate special fuel; and

(2) The supplier maintains the registration form for a period of six (6) years.

(c) When a user, dealer, or off-road consumer registration has been revoked and written notice of the revocation has been received by the supplier from the Director of the Department of Finance and Administration, it shall be unlawful for the supplier to make bulk sales or

deliveries to the user, dealer, or off-road consumer of distillate special fuel on which the tax has not been paid.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 5; A.S.A. 1947, § 75-1245; Acts 1987, No. 985, § 10; 1993, No. 618, § 6.

Publisher's Notes. As to Acts 1987, No. 985, § 1, see Publisher's Notes, § 26-56-201.

26-56-219. Cargo tank to carburetor connections unlawful — Penalties.

(a) It is unlawful to transport distillate special fuel within the State of Arkansas in any cargo tank from which distillate special fuel is sold or delivered which has a connection by pipe, tube, valve, or otherwise with the carburetor or with the fuel supply tank feeding the carburetor of the motor vehicle transporting the products.

(b)(1) In addition to any other penalties which may be incurred there is levied a specific penalty of twenty-five dollars (\$25.00) for each violation of the provisions of this section.

(2) This penalty shall be assessed by the Director of the Department of Finance and Administration or his or her representative and shall be collected in the same manner as is provided for the collection of tax in § 26-56-216.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 13; A.S.A. 1947, § 75-1253.

26-56-220. Unlawful activities regarding operation of motor vehicles.

(a) It is unlawful and a violation of this chapter to operate with distillate special fuel any motor vehicle licensed for highway operation on which a speedometer, odometer, or hub meter is not kept at all times in good operating condition to correctly measure and register the miles traveled by the motor vehicle.

(b) It shall be unlawful for any user of distillate special fuel to operate a truck in the State of Arkansas without the true owner's name and address or adequate identification on the outside of both right and left cab doors in letters not less than two inches (2") high, as near the center on the outside of the doors as possible. The name and address of the owner must be legible at a distance of twenty-five feet (25').

(c) It shall be unlawful for any person to operate with distillate special fuel any vehicle of Arkansas domestic registry unless he or she has in his or her possession an invoice for the distillate special fuel and the invoice meets the requirements of § 26-56-209.

(d)(1) In addition to any other penalties which may be incurred there is levied a specific penalty of twenty-five dollars (\$25.00) for each violation of the provisions of this section.

(2) This penalty shall be assessed by the Director of the Department of Finance and Administration or his or her representative and shall be collected in the same manner as is provided for the collection of tax in § 26-56-216.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 13; 1967, No. 357, § 6; A.S.A. 1947, § 75-1253.

26-56-221. Distribution of taxes.

Of the one cent (1¢) additional tax levied on all distillate special fuel under the provisions of Acts 1979, No. 437, § 2, the tax shall be remitted to the Treasurer of State separate and apart from other distillate special fuel taxes, and the gross amount thereof, without making any deduction therefrom for credit to the Constitutional Officer's Fund and the State Central Services Fund, shall be distributed as provided by the Arkansas Highway Revenue Distribution Law, §§ 27-70-201 — 27-70-203, 27-70-206, and 27-70-207.

History. Acts 1979, No. 437, § 3; A.S.A. 1947, § 75-1241.1.

A.C.R.C. Notes. Acts 1979, No. 437, § 2, is codified at § 26-56-201. The act

amended Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 1, to raise the excise tax levied on distillate special fuel in that act from 8½¢ to 9½¢.

26-56-222. Disposition of funds collected under §§ 26-56-201, 26-56-214, and 27-14-601.

(a) All of the additional taxes, fees, penalties, and interest collected under §§ 26-56-201, 26-56-214, and 27-14-601 shall be classified as special revenues and shall be deposited into the State Treasury.

(b) After deducting the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided under the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

(1) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

(2) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

(3) Seventy percent (70%) of the amount thereof to the State Highway and Transportation Department Fund.

(c) The funds shall be further disbursed in the same manner and used for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

History. Acts 1991, No. 219, § 6.

A.C.R.C. Notes. Acts 1991, No. 219, § 9, provided: "Provided, nothing in this act shall be construed to amend, abrogate, modify, or repeal any of the provisions of the 'Petroleum Storage Tank Trust Fund Act', Arkansas Code § 8-7-901 et seq., and the fees levied by that act on each gallon of motor fuel or distillate special fuels shall continue to be collected as provided by those Code sections in addition to all taxes and fees imposed by other sections of the Code on such fuel or fuels as well as those

additional taxes and fees imposed by this act."

Acts 1992 (1st Ex. Sess.), Nos. 68 and 69, § 9 provided: "All laws and parts of laws in conflict with this Act are hereby repealed, however, it is declared to be the intent of the General Assembly in amending subsection (d) of Arkansas Code § 27-14-601 by this Act to not only dedicate a portion of the fees to the State Highway and Transportation Department Fund collected for the separate registration of certain vehicles utilized or intended to be

utilized to transport compacted seed cotton, under certain restrictions set out in this Act, but also to clarify the intent of the General Assembly that all other taxes, fees, penalties, interest and other amounts collected under Arkansas Code § 27-14-601 be distributed in the same manner and utilized for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, Arkansas Code § 27-70-201, et seq., including an initial distribution of such taxes, fees,

penalties, interest and other amounts to the County Aid Fund, the Municipal Aid Fund, and the State Highway and Transportation Department Fund. It is further declared by the General Assembly that the amendment contained in this Act to subsection (d) of Arkansas Code § 27-14-601 is in no way intended to repeal, amend, or abrogate the provisions of Arkansas Code § 26-56-222."

Publisher's Notes. Act 1991, No. 219, § 6, is also codified as § 27-14-601.

26-56-223. Definitions.

As used in this section and §§ 26-56-224 — 26-56-231:

(1) The words and terms utilized herein, which words and terms are ascribed meanings in § 26-56-102, shall have the same meanings ascribed to such words and terms as are set out in § 26-56-102 unless the context clearly indicates a different meaning; and

(2) "Distillate special fuel" means the same as is set out in § 26-56-102 and includes diesel, but does not include products commonly referred to as kerosene, jet fuel, cutter stock, or light cycle oil.

History. Acts 1995, No. 954, § 1.

26-56-224. Fuel used for off-road purposes — Imposition of tax on dyed distillate special fuel.

(a) All distillate special fuel sold, used, or utilized in this state for off-road purposes, and not for the purpose of fueling motor vehicles, shall be dyed by the person or entity authorized to dye such fuels in accordance and in conformance with Pub. L. No. 103-66 and the Internal Revenue Service Regulation made and promulgated pursuant to Pub. L. No. 103-66 which were in effect on April 6, 1995.

(b)(1) There is levied an excise tax at the rate of six cents (6¢) per gallon on all dyed distillate special fuel sold, used, or utilized in this state.

(2)(A) If the dyed distillate special fuel contains biodiesel fuel, the excise tax in this subsection is levied only on the portion of the fuel that is not biodiesel fuel.

(B) As used in this subdivision (b)(2), "biodiesel fuel" means a diesel fuel substitute produced from nonpetroleum renewable resources.

(c) The excise tax levied in subsection (b) of this section shall be deposited as follows:

(1) Seventy-six and six-tenths percent (76.6%) shall be deposited as general revenues;

(2) Eight and five-tenths percent (8.5%) shall be deposited into the Property Tax Relief Trust Fund; and

(3) Fourteen and nine-tenths percent (14.9%) shall be deposited into the Educational Adequacy Fund.

(d)(1) The excise taxes levied by subsection (b) of this section shall be collected and remitted by suppliers of dyed distillate special fuel that are required to be licensed pursuant to § 26-56-204.

(2) The excise tax levied by subsection (b) of this section shall be paid by any person that uses dyed distillate special fuel on which the excise tax levied by subsection (b) of this section has not been paid.

(e) The excise taxes levied by subsection (b) of this section shall not apply to dyed distillate special fuel sold for consumption by:

- (1) Vessels, barges, and other commercial watercraft;
- (2) Railroads;
- (3) Municipal buses as described in § 26-52-417; or
- (4) To fuel sold to the United States Government.

(f) The excise taxes levied by subsection (b) of this section shall be reported and paid on or before the twentieth day of each month by electronic funds transfer as authorized pursuant to § 26-19-101 et seq. on forms to be prescribed by the Director of the Department of Finance and Administration.

(g) All distillate special fuel that has not been dyed in accordance with subsection (a) of this section and that is sold, used, or utilized in this state for any purpose or purposes shall be taxable at the total per-gallon tax rates as set out in this chapter.

(h) Off-road consumers purchasing dyed distillate special fuel shall not be required to obtain the annual off-road consumer permits required by § 26-56-204(a), and bulk sales of such dyed distillate special fuel may be made to such off-road consumers notwithstanding the provisions of § 26-56-218.

History. Acts 1995, No. 954, § 1; 2007, No. 87, § 2.

Amendments. The 2007 amendment added "Imposition of tax on dyed distillate special fuel" to the end of the section heading; and inserted present (b) through (f) and redesignated the remaining subsections accordingly.

U.S. Code. Pub.L. 103-66, referred to in this section, is codified throughout the U.S. Code. The provisions of Pub.L. 103-66 relating to the dyeing of fuel are codified as 26 U.S.C. §§ 4082 and 6714.

26-56-225. Use of dyed distillate special fuel.

Dyed distillate special fuel shall not be used or utilized in the fuel supply tank of any motor vehicle with the exception of:

- (1) State and local government vehicles;
- (2) Local transit buses;
- (3) Intercity buses;
- (4) School buses;
- (5) Vehicles owned by aircraft museums;
- (6) Vehicles used by nonprofit educational organizations; and
- (7) Red Cross vehicles,

as such vehicles and buses are defined in Pub. L. No. 103-66 and the Internal Revenue Service Regulations made and promulgated pursuant to Pub. L. No. 103-66 which are in effect on April 6, 1995.

History. Acts 1995, No. 954, § 1.

U.S. Code. Pub.L. 103-66, referred to in this section, is codified throughout the U.S. Code. The provisions of Pub.L.

103-66 relating to fuels not used for taxable purposes is codified as 26 U.S.C. § 6427.

26-56-226. Penalty for improper use of dyed distillate special fuel.

(a)(1) The Director of the Department of Finance and Administration upon finding a motor vehicle using or utilizing dyed distillate special fuel for the purpose of operating that motor vehicle not excepted in § 26-56-225, shall:

(A) Assess all taxes due the state at the total per-gallon tax rates set out in this chapter upon all fuel that could be contained in the fuel supply tank or tanks of that motor vehicle, if filled to capacity; and

(B) Assess a penalty of ten dollars (\$10.00) per gallon on all such fuel that could be contained in the fuel supply tank or tanks of such motor vehicle, if filled to capacity.

(2) Further, if any dyed distillate special fuel is found in any fuel storage tank or fuel storage facility outside of the terminal utilized by the operator of that motor vehicle, or any other person, for the purpose of fueling that motor vehicle, the director shall:

(A) For taxation purposes, make an assessment based on the entire amount of such fuel that could be contained in such fuel storage tank or fuel storage facility, if filled to capacity, at the total per-gallon tax rates set out in this chapter; and

(B) Assess a penalty of ten dollars (\$10.00) per gallon on all such fuels that could be contained in any such fuel storage tank or fuel storage facility, if filled to capacity, if such fuels are utilized by the operator of that motor vehicle, or are utilized by any other person, for the purpose of fueling that motor vehicle.

(b)(1)(A) The presence of any amount of dyed distillate special fuel in the fuel supply tank of any motor vehicle not excepted in § 26-56-225, or in a fuel storage tank or fuel storage facility outside of the terminal utilized by the operator of such motor vehicle, or any other person, for the purpose of fueling that motor vehicle shall create a rebuttable presumption that the entire amount of fuel that could be contained in the fuel supply tank of such motor vehicle, or that could be contained in such fuel storage tank or fuel storage facility, has been, or is being, used or utilized for taxable purposes.

(B) Thus the entire amount of such fuel that could be contained in such tank and facility, if filled to capacity, shall be susceptible to full distillate special fuel taxation.

(2) Such assessments shall be made against the operator or any other person the director deems responsible for the usage or utilization of such dyed distillate special fuel in that motor vehicle.

(c) All penalties authorized by this section shall be in addition to all

other penalties provided in this chapter and in the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1995, No. 954, § 1.

26-56-227. Mixed dyed and undyed distillate special fuel — Additional penalty.

(a) Dyed distillate special fuel shall not be mixed with undyed distillate special fuel in the fuel supply tank of any motor vehicle, other than in the fuel supply tank of a motor vehicle excepted in § 26-56-225, or in any fuel storage tank or fuel storage facility, other than fuel storage tanks or fuel storage facilities utilized exclusively for the purpose of fueling motor vehicles excepted in § 26-56-225.

(b)(1) The Director of the Department of Finance and Administration upon finding any fuel supply tank of a motor vehicle, fuel storage tank, or fuel storage facility outside of the terminal containing mixed dyed and undyed distillate special fuel, which fuel is being used or utilized in a motor vehicle or is being stored for ultimate usage or utilization in a motor vehicle not excepted in § 26-56-225 shall:

(A) Assess for taxation purposes the entire number of gallons of such fuel that could be contained in those fuel supply tanks, fuel storage tanks, or fuel storage facilities, if such tanks or facilities were filled to capacity, as taxable gallons at the total per-gallon tax rates set out in this chapter; and

(B) Assess a penalty of ten dollars (\$10.00) per gallon on all such fuel.

(2)(A) The presence of any amount of dyed distillate special fuel in the fuel supply tank of any motor vehicle not excepted in § 26-56-225 or in a fuel storage tank or fuel storage facility outside of the terminal utilized by the operator of such motor vehicle, or any other person, for the purpose of fueling that motor vehicle, shall create a rebuttable presumption that the entire amount of fuel that could be contained in the fuel supply tank of such motor vehicle, or of a fuel storage tank or fuel storage facility, if mixed, has been, or is being, used or utilized for taxable purposes.

(B) Thus the entire amount of such fuel that could be contained in such tanks and facilities, if filled to capacity, shall be susceptible to full distillate special fuel taxation.

(3) Such assessments shall be made against the operator of any motor vehicle, or owner or operator of such fuel storage tank or fuel storage facility outside of the terminal, or any other person the director deems responsible for the usage or utilization of such distillate special fuel in any motor vehicle involved in the assessment.

(c) All penalties authorized by this section shall be in addition to all other penalties provided in this chapter and in the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1995, No. 954, § 1.

26-56-228. Authority of director.

(a)(1) The Director of the Department of Finance and Administration shall have the authority to:

(A) Stop motor vehicles;

(B) Take samples of the fuel used or utilized for the operation of those motor vehicles;

(C) Measure the amounts of fuel that could be contained in the supply tanks of such motor vehicles; and

(D) Test such fuel, regardless of the location of such motor vehicles.

(2) The director shall have the authority to:

(A) Take samples of distillate special fuel stored in fuel storage tanks or fuel storage facilities outside of the terminal, which fuel may be used or utilized in motor vehicles;

(B) Measure the amount of fuel that could be contained in such tanks or facilities, if filled to capacity; and

(C) Test such fuel, regardless of the location of such tanks or facilities.

(b)(1)(A) Any person who shall refuse to allow the director to sample, test, and measure the fuel that could be contained in any fuel supply tank of a motor vehicle, or in any fuel storage tank, or in any fuel storage facility outside of the terminal shall be assessed taxes at the total per-gallon tax rates set out in this chapter upon all fuels as determined by the director that could be contained in such fuel supply tank, fuel storage tank, or fuel storage facility, if filled to capacity.

(B) Additionally, a penalty of ten dollars (\$10.00) per gallon on all such fuel shall be assessed.

(2)(A) It shall be prima facie evidence that the entire amount of such fuel in the fuel supply tank, fuel storage tank, or fuel storage facility outside of the terminal is taxable and that, by the refusal to allow such sampling, measuring, or testing, distillate special fuel taxes have not been paid on such fuel.

(B) The director shall add a penalty of twenty percent (20%) of the total amount of the assessed taxes excluding the ten-dollar-per-gallon penalty to the total amount assessed for willful refusal to allow such sampling, measuring, or testing, which penalty shall be in addition to all other penalties provided in this section, this chapter, and in the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(3) Such assessments shall be made against the operator of any motor vehicle, fuel storage tank, or fuel storage facility outside of the terminal involved in the assessment or against any other person the director deems responsible for the use or utilization of such fuel in any motor vehicle involved in the assessment.

History. Acts 1995, No. 954, § 1.

26-56-229. Multiple violations.

(a)(1) In the event that assessments are made by the Director of the Department of Finance and Administration against the same operator or the same person for violating the provisions of § 26-56-226, § 26-56-227, or § 26-56-228 within three (3) years of any assessment made by the director for previous violations of any of those provisions, the director shall assess a penalty of twenty dollars (\$20.00) per gallon on all such fuel assessed, and for third and subsequent violations within a three-year period by the same operator or the same person, the director shall assess a penalty of thirty dollars (\$30.00) per gallon on all such fuel assessed.

(2) All assessments made pursuant to this section shall be in lieu of the ten-dollar-per-gallon penalty otherwise provided in §§ 26-56-226 — 26-56-228, but shall be in addition to all other penalties provided therein.

(b) All assessments and procedures related to assessments authorized by §§ 26-56-223 — 26-56-231 shall be conducted in accordance with and pursuant to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1995, No. 954, § 1.

26-56-230. Disposition of taxes, fees, and other revenues.

Except as provided in § 26-56-224(b) – (f), all taxes, fees, penalties, and other amounts collected under the provisions of §§ 26-56-223 — 26-56-231 shall be classified as special revenues, and the net amount shall be distributed as provided by the Arkansas Highway Revenue Distribution Law, §§ 27-70-201 — 27-70-203, 27-70-206, and 27-70-207.

History. Acts 1995, No. 954, § 1; 2007, No. 87, § 4. added “Except as provided in § 26-56-224(b)-(f)” at the beginning.

Amendments. The 2007 amendment

26-56-231. Rules and regulations.

(a) The Director of the Department of Finance and Administration, in consultation with the Director of State Highways and Transportation, shall have the authority to make and promulgate rules and regulations to fully implement and enforce the provisions of §§ 26-56-223 — 26-56-230.

(b) Provisions shall be included in such rules and regulations to allow any user enumerated in § 26-56-225, upon proper notice and certification to the Director of the Department of Finance and Administration that dyed distillate special fuel is unavailable to that user at

that time, to utilize untaxed, undyed distillate special fuel in motor vehicles belonging to such users.

History. Acts 1995, No. 954, § 1.

26-56-232. Electronic reports — Electronic funds transfer.

(a) The Director of the Department of Finance and Administration shall make all necessary preparations in order that all reports submitted beginning July 1, 1997, and thereafter, or beginning before that date, if possible, by:

(1) Distributors of motor fuel, as required by the Motor Fuel Tax Law, § 26-55-201 et seq.;

(2) Suppliers of distillate special fuel and liquefied gas special fuels, as required by this chapter;

(3) Alternative fuel suppliers, as required by the Alternative Fuels Tax Law, § 26-62-101 et seq.; and

(4) All other persons required to submit any type of reports to the director pursuant to those tax laws, shall be submitted by electronic means and to ensure that such reports shall be processed electronically by the Department of Finance and Administration.

(b) The director shall also make and promulgate rules and regulations to ensure that such distributors, suppliers, and alternative fuel suppliers, beginning July 1, 1997, and thereafter, or beginning before that date, if possible, remit all taxes due the state pursuant to those tax laws by electronic funds transfer.

History. Acts 1995, No. 954, § 2.

SUBCHAPTER 3 — LIQUEFIED GAS

SECTION.

- 26-56-301. Levy and imposition of tax — Alternative payment of fees.
- 26-56-302. Exemptions.
- 26-56-303. Suppliers and dealers — Licenses and bonds.
- 26-56-304. Users' permits generally.
- 26-56-305. Users' permits — Transfer.
- 26-56-306. Users' permits — Window decals.
- 26-56-307. Suppliers or interstate users — Computation, reporting, and payment of tax.
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SECTION.

- 26-56-309. Reports by dealers.
- 26-56-310. Surrender of license or permit — Discontinuance of business.
- 26-56-311. Revocation of supplier's or dealer's license.
- 26-56-312. Importation or use by unlicensed persons.
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- 26-56-314. Nonresident users.
- 26-56-315. Conversion of vehicles for use of liquefied gas special fuel.

Effective Dates. Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 7: June 10, 1965.

Emergency clause provided: "It is hereby found and determined by the General As-

sembly that the existing highway user tax laws of this State are inadequate to provide sufficient funds to properly construct, reconstruct and maintain the State highways, county roads and city streets of this State; that the existing investment of millions of dollars in public roads, streets and bridges is in jeopardy if additional funds are not provided; that increased motor vehicle traffic poses a serious threat to public safety unless immediate steps are taken to provide a more adequate and better maintained system of public roads, streets and bridges; that the existing Special Motor Fuels Tax Law of this State is not conducive to proper enforcement, and immediate steps must be taken to provide for a more enforceable law in order to avoid tax evasion; and, that the immediate passage of this Act is necessary to correct the aforementioned circumstances. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 764, § 5: July 1, 1979.

Acts 1981, No. 818, § 3: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that liquefied gas special fuel user's permits expire on June 30th of each year and that this Act needs go into effect on the first day of the new permit periods and that therefore this Act needs to become effective on July 1, 1981. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace,

health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1983, No. 830, § 5: Mar. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the orderly administration of the motor fuel tax laws is essential for the effective collection of these taxes; that some uncertainty exists regarding the sale of fuels to the United States and, that this Act is necessary to clarify this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after the first day of the first month immediately following its passage and approval."

26-56-301. Levy and imposition of tax — Alternative payment of fees.

(a) There is levied and imposed an excise tax of seven and one-half cents (7½¢) per gallon upon the use, as defined in § 26-56-102(22), of all liquefied gas special fuels within this state. Such use of liquefied gas special fuels shall constitute and is declared to be the taxable incident of this levy.

(b) However, in lieu of the gallonage tax levied in this section with respect to liquefied gas special fuels used under this subchapter, except as otherwise provided herein the Director of the Department of Finance and Administration shall require the payment of the fees prescribed in

§ 26-56-304 in the case of all vehicles required to obtain liquefied gas special fuels user's permits under this subchapter, except licensed liquefied gas special fuels suppliers.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 1; A.S.A. 1947, § 75-1254.

26-56-302. Exemptions.

The tax levied by this subchapter shall not be applicable to the sale of liquefied gas special fuels to official United States Government agencies for use in official United States Government vehicles.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 2; 1983, No. 830, § 2; A.S.A. 1947, § 75-1255.

26-56-303. Suppliers and dealers — Licenses and bonds.

(a) No person shall engage in the business of a liquefied gas special fuels supplier or dealer in this state until that person has filed an application for and obtained a liquefied gas special fuels supplier's or dealer's license.

(b)(1) Application for licenses shall be filed on a form prescribed by Director of the Department of Finance and Administration and verified by affidavit, and shall show the name, address, and kind of business of the applicant, a designation of the applicant's principal place of business, and such other pertinent information as the director may require.

(2) The application must also contain as a condition to the issuance of the license an agreement under oath by the applicant to comply with the requirements of this subchapter and the rules and regulations of the director.

(c)(1) Before any such application may be approved by the director, the applicant shall file a bond with surety satisfactory to the director, payable to the State of Arkansas, and conditioned upon the applicant's compliance with the provisions of this subchapter and the rules and regulations of the director.

(2) The bond is to be in the sum of not less than five hundred dollars (\$500) and not more than twenty thousand dollars (\$20,000), the amount to be in each case fixed by the director. However, the amount of the bond may be increased or decreased within the aforementioned limits by the director at any time.

(3) No bond shall be cancelled by the sureties thereon until the expiration of sixty (60) days after receipt of notice of the cancellation by the director, and such cancellation shall have no retroactive effect.

(d) Upon approval of the application and bond, the director shall issue to the applicant a nontransferable liquefied gas special fuels supplier's license or dealer's license, as the case may be, bearing a distinctive number.

(e) The license shall remain in full force until surrendered, suspended, revoked, or cancelled in the manner provided in this subchapter.

(f)(1) Each liquefied gas special fuels supplier or dealer shall make application for and secure a duplicate of his or her license for each station or facility operated by such supplier or dealer at which liquefied gas special fuels are sold or used.

(2) The application shall be made on a form prescribed by the director showing the name, address, and the supplier or dealer license number of the applicant, the location of the station or facility for which the duplicate is applied, and such other pertinent information as the director may require.

(3) Upon approval of the application, the director shall issue to the applicant a nontransferable duplicate of the liquefied gas special fuels supplier's or dealer's license.

(g) There shall be displayed in a conspicuous place at each station or facility where liquefied gas special fuels are sold or used the original or duplicate liquefied gas special fuels supplier's or dealer's license under which the station or facility is operated.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 3; A.S.A. 1947, § 75-1256.

26-56-304. Users' permits generally.

(a) Each liquefied gas special fuels user, including licensed liquefied gas special fuels suppliers and dealers who use liquefied gas special fuels in vehicles owned by the supplier or dealer, shall make application for and secure a liquefied gas special fuels user's permit for each vehicle owned and operated which uses liquefied gas special fuels.

(b) The application must be made on a form prescribed by the Director of the Department of Finance and Administration, showing the name, address, and user license number or supplier or dealer license number of the applicant, the make, model, and motor number of the vehicle involved, the type of fuel used therein, and such other pertinent information as the director may require.

(c) The fuel user's permit shall be obtained annually before the director shall register and issue a motor vehicle license for the vehicle.

(d)(1) At the time of applying for such permit and prior to the registration and issuance of a motor vehicle license for the vehicle, each applicant except licensed liquefied gas special fuels suppliers shall remit to the director, in addition to the regular fee prescribed by law for the registration and licensing of the vehicle, an additional fee in an amount which is determined by the General Assembly, based upon information available from statistical studies of the motor vehicular use of liquefied gas special fuels by various classes of users, as follows:

NONFARM VEHICLES

	<u>Annual Additional Fee</u>
Passenger cars and motor homes	\$ 164.00
Pickup trucks, one-half (½) and three-quarter (¾) ton	195.00
Pickup trucks, one (1) ton	251.00
Trucks, maximum gross loaded weight in excess of one (1) ton but not exceeding 22,500 pounds	520.00
Passenger buses except school buses manufactured and licensed as such	520.00
School buses manufactured and licensed as such	60.00
Trucks, maximum gross loaded weight in excess of 22,500 pounds	609.00

FARM VEHICLES

In order to aid in the production of farm products and to eliminate apparent inequities in liquefied gas special fuels fees which are in lieu of the gallonage tax on such fuel used in vehicles operated primarily on farms and not on the main highway system of this state, a special classification is created for farm vehicles using liquefied gas special fuels and entitled to be registered and licensed as natural resources farm vehicles. The flat fee in lieu of the gallonage tax on the fuel used in such vehicle shall be as follows:

Pickup trucks, one-half (½) and three-quarter (¾) ton	\$ 130.00
Pickup trucks, one (1) ton	156.00
Trucks, maximum gross loaded weight in excess of one (1) ton but not exceeding 22,500 pounds	178.00
Trucks, maximum gross loaded weight in excess of 22,500 pounds	260.00

(2) If the director determines that the flat fee provided herein in lieu of the gallonage tax on liquefied gas special fuels is, in the case of common or contract carriers or other vehicles for hire, inadequate to compensate for the gallonage tax, the director may require such common or contract carriers or owners of other vehicles for hire to pay a fee based upon the actual mileage of the common or contract carrier or vehicle for hire for the previous year, the current year, or any other reasonable basis.

(3) The director shall establish regulations for computing the fees and for the enforcement of the collection thereof.

(4) If any new liquefied gas special fuels vehicle is placed in operation or any other vehicle shall be converted to a liquefied gas special fuels vehicle during the registration year, the owner shall be permitted to pay a proportionate part of the liquefied gas special fuels user's permit fee for such vehicle for the remainder of the current registration year based

upon one-twelfth (1/12) of the annual fee for such vehicle for each calendar month or fraction thereof remaining in the current registration year.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 3; 1967, No. 316, § 1; 1981, No. 789, § 1; A.S.A. 1947, § 75-1256; Acts 1991, No. 364, § 4; 1991, No. 382, § 4.

A.C.R.C. Notes. Acts 1991, No. 364, § 5 as amended by identical Acts 1991, Nos. 1040 and 1239, §§ 5 and 6, and Acts 1991, No. 382, § 5, as amended by Acts 1991, identical acts Nos. 1040 and 1239, §§ 7 and 8, provided:

“(a) All of the additional taxes, fees, penalties and interest collected under the provisions of this subchapter and §§ 26-55-710, 26-56-214, and 26-56-304 shall be classified as special revenues and shall be deposited in the State Treasury. After deducting therefrom the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

“(A) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

“(B) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

“Seventy percent (70%) of the amount thereof to a special account in the State Highway and Transportation Department Fund to be designated the ‘1991 Highway Construction and Maintenance Account’.

“(b) The funds in the 1991 Highway Construction and Maintenance Account shall be held, managed, and used in the same manner and for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., excluding, however, § 27-70-206;

“(c) Provided that, in keeping with the spirit of section 105 of Public Law 97-424 and the Arkansas State Highway Commission’s goals for encouraging the participation of disadvantaged business enterprises in entering into and performing contracts with the commission, including the purchasing of supplies and equipment by the commission and for the construction, reconstruction, and maintenance of highways and bridges in the state highway system, the Arkansas State Highway Commission is authorized to expend up to ten percent (10%) of the total funds and revenues available and disbursed to the commission pursuant to this section for the purposes of achieving those goals.”

26-56-305. Users’ permits — Transfer.

When a motor vehicle permitted to use liquefied gas special fuels under this subchapter is altered to operate on a fuel other than liquefied gas special fuels or destroyed prior to the expiration of the permit period, the Director of the Department of Finance and Administration upon the request of the motor vehicle owner within ten (10) days of the conversion or destruction and the payment of a two-dollar transfer fee shall transfer the permit for the remainder of the permit period to another motor vehicle operating on liquefied gas special fuels owned by the person.

History. Acts 1981, No. 818, § 1; A.S.A. 1947, § 75-1265.1.

26-56-306. Users’ permits — Window decals.

(a) The Director of the Department of Finance and Administration shall promulgate special serially numbered window decals to be issued for motor vehicles for which liquefied gas special fuels user’s permits are issued, except motor vehicles of licensed liquefied gas special fuels

suppliers, which distinctive window decals shall evidence not only the registration of the motor vehicle but shall evidence the fact that the special permit fee charged under § 26-56-304 has been paid.

(b) Each motor vehicle bearing such special and distinctive window decals shall entitle the owner or user of the motor vehicle to purchase liquefied gas special fuels from licensed liquefied gas special fuels suppliers only without the necessity of paying the gallonage tax levied thereon under § 26-56-301, it being the intent of that section that the payment of the special fee levied by § 26-56-304 shall be in lieu of and in full satisfaction of the liquefied gas special fuels gallonage taxes that would have otherwise been due on liquefied gas special fuels used in the motor vehicle during the period for which the license and permit is issued.

(c) When a motor vehicle bearing a special and distinctive liquefied gas special fuels window decal is transferred, the liquefied gas special fuels window decal shall remain with the motor vehicle, and, when the registration of the motor vehicle is transferred to the new owner, such new owner shall be entitled to purchase liquefied gas special fuels for the motor vehicle without payment of the gallonage tax thereon the same as the former owner.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 3; 1967, No. 316, § 1; 1981, No. 789, § 1; A.S.A. 1947, § 75-1256.

26-56-307. Suppliers or interstate users — Computation, reporting, and payment of tax.

(a) Each licensed liquefied gas special fuels supplier or interstate user shall compute, report, and pay the tax on all liquefied gas special fuels used in each vehicle owned or operated by him or her in this state on which the tax levied by this subchapter has not been paid by ascertaining the total highway miles driven in this state and dividing this total by the applicable mileage factor, as set forth below, to compute the quantity of special fuel used upon which the tax levied in § 26-56-301 is applicable.

(b)(1) For the purpose of this section, all automobiles with a capacity of fewer than eight (8) passengers shall be deemed to be Class A vehicles.

(2) All truck-type vehicles with a factory rating and gross loaded weight of less than twenty-two thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class B vehicles.

(3) All vehicles with a factory rating in excess of twenty-two thousand five hundred pounds (22,500 lbs.) or whose total gross loaded weight exceeds twenty-two thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class C vehicles.

(c) The mileage factor per gallon of liquefied gas special fuels for:

(1) Class A vehicles shall be twelve (12) miles;

(2) Class B vehicles shall be eight (8) miles; and

(3) Class C vehicles shall be four (4) miles.

(d) When calculating the number of gallons of liquefied gas special fuels on which the gallonage tax levied by § 26-56-301 is due, the suppliers and users shall be allowed a credit equal to the amount of the tax paid on each gallon of liquefied gas special fuels purchased or received in this state when each such credit is supported by a copy of the purchase invoice showing the amount of tax paid, signed by the supplier or dealer from which the liquefied gas special fuels was purchased or delivered.

(e) The due date of the interstate user reports shall be the twenty-fifth day following each calendar quarter.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 4; 1979, No. 764, § 3; A.S.A. 1947, § 75-1257.

26-56-308. Reports and payment of tax by suppliers.

(a) On or before the twenty-fifth day of each calendar month next following the calendar month for which the report is made, each liquefied gas special fuels supplier shall report to the Director of the Department of Finance and Administration:

(1) The total gallons of liquefied gas special fuels sold or delivered to each liquefied gas special fuels dealer, the name and address and dealer license number of each dealer, and the tax collected thereon;

(2) The number of gallons of liquefied gas special fuels sold or delivered to liquefied gas special fuels users other than dealers, the name and address of each user, the quantity sold or delivered to each user, and the tax collected thereon;

(3) If the liquefied gas special fuels are delivered into the supply tanks of any vehicle for which the flat fee provided for in § 26-56-304 has been paid, the vehicle license number of the vehicle;

(4) The number of gallons of liquefied gas special fuels used by such supplier for his or her own purposes, and the quantity thereof subject to the tax levied;

(5) The quantity of liquefied gas special fuels otherwise disposed of by the supplier and the portion thereof subject to the tax levied in § 26-56-304; and

(6) Such other information as the director may require by regulation.

(b) The report shall be made even though no tax is due.

(c) Each liquefied gas special fuels supplier at the time of filing the monthly report required by this section shall remit to the director any and all taxes due on liquefied gas special fuels covered by the report.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 7; A.S.A. 1947, § 75-1260.

26-56-309. Reports by dealers.

Every liquefied gas special fuel dealer on or before the twenty-fifth day of the month shall monthly file a report with the Director of the Department of Finance and Administration for the preceding calendar month showing:

(1) All liquefied gas special fuels sold, delivered, or used by such dealer, whether the liquified gas special fuels are sold or delivered for a taxable or nontaxable use;

(2) The name and address of the purchasers;

(3) The quantity purchased by each; and

(4) In the case of liquefied gas special fuels delivered into the supply tanks of vehicles on which the flat fee provided in this subchapter has been paid, the name, address, and vehicle license number of the purchaser.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 8; A.S.A. 1947, § 75-1261.

26-56-310. Surrender of license or permit — Discontinuance of business.

(a) Whenever any person to whom a liquefied gas special fuels supplier's license, dealer's license, or liquefied gas special fuels user's permit has been issued, discontinues to supply, sell, or use liquefied gas special fuels within the state, such person shall notify the Director of the Department of Finance and Administration in writing of that fact within thirty (30) days thereafter and surrender his or her license or permit to the director.

(b) No person surrendering any such license or permit shall be entitled to any refund of any of the fees previously paid.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 9; A.S.A. 1947, § 75-1262.

26-56-311. Revocation of supplier's or dealer's license.

(a) If a licensed liquefied gas special fuels supplier or dealer fails to file any report required by this subchapter, or falsely or fraudulently files a report, or fails to pay the full amount of the tax levied by this subchapter, or if at any time the surety on such licensee's bond becomes unsatisfactory or inaccessible to the Director of the Department of Finance and Administration or the bond is discharged or cancelled, and a new bond is not furnished by the licensee within five (5) days after the demand of the director, the director may give notice to the licensee of an intention to revoke his license.

(b) The licensee shall be entitled to a period of ten (10) days after the mailing of the notice within which to apply for a hearing on the question of having his or her license revoked, and the director shall designate a time and place for the hearing, giving the licensee five (5) days' notice thereof.

(c) After the hearing at which the licensee shall be entitled to present evidence and be represented by counsel, the director shall determine whether the licensee's license shall be revoked.

(d)(1) Upon the issuance of an order revoking the license, the licensee shall be entitled to appeal to the circuit court in any county in which the licensee may do business, where the question shall be tried *de novo*, but the director's order shall be affirmed if supported by substantial evidence.

(2) An appeal may be had from the judgment of the circuit court as in other cases as provided by law.

(e)(1) If the licensee fails to apply for a hearing within the prescribed time, the director may immediately revoke the license of the licensee and notify the licensee by registered mail, addressed to the last known address of the licensee appearing in the files of the director.

(2) The director shall also notify the surety company on the licensee's bond in like manner.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 9; A.S.A. 1947, § 75-1262.

26-56-312. Importation or use by unlicensed persons.

(a) Any person operating a motor vehicle on the highways of this state who for the first time imports liquefied gas special fuels into the state in the supply tank of a motor vehicle but who has not obtained a liquefied gas special fuels user's permit from this state or who is not a bonded liquefied gas special fuels supplier in this state shall nevertheless be deemed a liquefied gas special fuels user.

(b) For the purposes of determining the number of gallons of liquefied gas special fuels consumed in operating on the highways of this state, the liquefied gas special fuels user shall be required to pay to the Director of the Department of Finance and Administration the tax levied by this subchapter on each gallon of liquefied gas special fuels contained in the supply tank of the motor vehicle at the time of entry into the state and upon all liquefied gas special fuels used in this state upon which the tax levied in this subchapter has not been paid.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 5; A.S.A. 1947, § 75-1258.

26-56-313. Purchases by unlicensed persons — Payment of tax.

(a) Any person purchasing liquefied gas special fuels for delivery into the supply tanks of the motor vehicle of such person, if such person does not have a liquefied gas special fuels user's permit as evidenced by the appropriate license issued therefor as provided in this subchapter or if such person is not a bonded licensed liquefied gas special fuels supplier, shall pay to the supplier or dealer at the time of purchase of liquefied gas special fuels the gallonage tax levied in § 26-56-301 on each gallon

of liquefied gas special fuels so delivered into the supply tanks of the motor vehicle.

(b)(1) At the time of making the delivery, the supplier or dealer shall prepare in duplicate a receipt reflecting the:

- (A) Name and address of the purchaser;
- (B) Make, model, and license number of the motor vehicle in which the liquefied gas special fuels are delivered;
- (C) Total amount of gallons delivered; and
- (D) Tax collected thereon.

(2) The supplier or dealer shall deliver the original copy to the purchaser and shall retain the duplicate copy for a period of two (2) years for inspection by the Director of the Department of Finance and Administration or his or her designated agents.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 6; A.S.A. 1947, § 75-1259.

26-56-314. Nonresident users.

If the Director of the Department of Finance and Administration deems it necessary for the proper enforcement and collection of the tax on liquefied gas special fuels used in this state against nonresident users, other than occasional nonresident users, the director may require the nonresident users to obtain a permit, post bond, and report and remit the tax in the same manner as is required in this subchapter for liquefied gas special fuels suppliers.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 5; A.S.A. 1947, § 75-1258.

26-56-315. Conversion of vehicles for use of liquefied gas special fuel.

(a)(1) Any liquefied gas special fuels dealer, garage, mechanic, owner, or operator of a motor vehicle who converts or causes a vehicle to be converted to enable the vehicle to be operated on liquefied gas special fuels shall report the conversion to the Director of the Department of Finance and Administration on forms prescribed by the director within ten (10) days after the conversion.

(2) If any owner or operator fails to report a conversion to the director within the time prescribed above, such person shall be assessed a penalty of fifty dollars (\$50.00) which shall be in addition to any criminal penalty provided in this chapter.

(b) No person shall convert or equip any motor vehicle for the use of liquefied gas special fuels unless the person is licensed to do so by the Liquefied Petroleum Gas Board and has also made application for and obtained a license as a liquefied gas special fuels converter from the director and posted a bond in an amount determined by the director conditioned that the person will report to the director all vehicles so converted by the person as required by this section.

(c) It shall be unlawful for any person to operate any vehicle which has been converted or equipped to use liquefied gas special fuels unless the vehicle has been reported to the director and a liquefied gas special fuels user's permit has been obtained therefor as required.

History. Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, §§ 10-12; A.S.A. 1947, §§ 75-1263 — 75-1265.

SUBCHAPTER 4 — DIESEL-POWERED VEHICLES

SECTION.

26-56-401 — 26-56-404. [Repealed.]

26-56-405. Payment of tax by Arkansas State Highway and Transportation Department.

SECTION.

26-56-406 — 26-56-408. [Repealed.]

Effective Dates. Acts 1979, No. 903, § 9: Apr. 16, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws relating to the collection of special motor fuel taxes for fuel used by certain classes of users are not adequate to assure the effective enforcement of such laws; that this Act is designed to correct this

situation and should be given effect immediately to avoid further loss of revenues. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-56-401 — 26-56-404. [Repealed.]

Publisher's Notes. These sections, concerning purchase of tax-free diesel fuel and permits for diesel-powered vehicles, were repealed by Acts 1993, No. 618, § 7. The sections were derived from the following sources:

26-56-401. Acts 1979, No. 903, § 3; A.S.A. 1947, § 75-1274.

26-56-402. Acts 1979, No. 903, § 1; A.S.A. 1947, § 75-1272.

26-56-403. Acts 1979, No. 903, § 4; A.S.A. 1947, § 75-1275.

26-56-404. Acts 1979, No. 903, § 5; A.S.A. 1947, § 75-1276; Acts 1987, No. 640, § 1.

26-56-405. Payment of tax by Arkansas State Highway and Transportation Department.

(a) The Arkansas State Highway and Transportation Department shall continue to pay the special motor fuel tax established by this chapter on all diesel-powered motor vehicles as defined in § 26-56-102 owned by the department.

(b) For purposes of computing this tax, the department shall use its fuel consumption reports and shall file with the Director of the Department of Finance and Administration an appropriate monthly

report stating the gallons used in the department's motor vehicles and the tax due and payable.

(c) The department shall remit the tax due each month to the director.

History. Acts 1979, No. 903, § 5; A.S.A. 1947, § 75-1276.

26-56-406 — 26-56-408. [Repealed.]

Publisher's Notes. These sections, concerning permit holder tax refund, diesel fuel sales tax liability, and disposition of fees and fines, were repealed by Acts 1993, No. 618, § 7. The sections were derived from the following sources:

26-56-406. Acts 1979, No. 903, § 2; A.S.A. 1947, § 75-1273.

26-56-407. Acts 1979, No. 903, § 3; A.S.A. 1947, § 75-1274.

26-56-408. Acts 1979, No. 903, § 6; A.S.A. 1947, § 75-1277.

SUBCHAPTER 5 — ADDITIONAL TAXES AND FEES

SECTION.

26-56-501. Applicability.

26-56-502. Additional tax levied on distillate special motor fuels.

SECTION.

26-56-503. [Repealed.]

26-56-504. Disposition of revenues.

Effective Dates. Acts 1985, No. 456, § 6. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the rural roads, highways, roads and streets in this State are operationally hazardous and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction and reconstruction of such roads, highways and streets is

essential to the public health, welfare and safety of the people of this State and that only by the immediate passage of this Act may such vitally needed additional funds be provided to solve the aforementioned problem. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Vetoed, Mar. 19, 1985 and passed over veto Mar. 20, 1985.

26-56-501. Applicability.

The additional taxes and fees levied in this subchapter on motor fuel, distillate special fuel, liquefied gas special fuels, and vehicles using liquefied gas special fuels shall be applicable to motor fuel and distillate special fuel sold and liquefied gas special fuels vehicles which are registered or for which registration is renewed on and after April 1, 1985.

History. Acts 1985, No. 456, § 4; A.S.A. 1947, § 75-1281.

Publisher's Notes. Acts 1985, No. 456,

§§ 1-4, are also codified as § 26-55-1001 et seq.

26-56-502. Additional tax levied on distillate special motor fuels.

(a) In addition to the tax levied upon distillate special fuel in § 26-56-201 and upon liquefied gas special fuels in § 26-56-301, there is levied an excise tax of four cents (4¢) per gallon upon all liquefied gas special fuels and two cents (2¢) per gallon upon all distillate special fuel subject to the tax levied in those sections.

(b) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of other distillate special fuel taxes.

History. Acts 1985, No. 456, § 1; A.S.A. 1947, § 75-1278; Acts 1989, No. 821, § 10.

26-56-503. [Repealed.]

Publisher's Notes. This section, concerning additional fees for vehicles using liquefied gas special fuel, was repealed by

Acts 1991, Nos. 364 and 382, § 6. The section was derived from Acts 1985, No. 456, § 2; A.S.A. 1947, § 75-1279.

26-56-504. Disposition of revenues.

(a)(1) All taxes, interest, penalties, and costs received by the Director of the Department of Finance and Administration from the additional taxes and fees levied by this subchapter shall be classified as special revenues and shall be deposited into the State Treasury.

(2) The net amount thereof shall be transferred by the Treasurer of State on the last business day of each month, as follows:

(A) Fifteen percent (15%) of the amount to the County Aid Fund;

(B) Fifteen percent (15%) of the amount to the Municipal Aid Fund; and

(C) Seventy percent (70%) of the amount to the State Highway and Transportation Department Fund.

(b)(1) All such funds credited to the State Highway and Transportation Department Fund shall be used for construction, reconstruction, and maintenance of the rural state highways of the state and their extensions into municipalities and industrial access roads.

(2) The State Highway Commission shall provide to each member of the General Assembly on January 1, 1986, and annually thereafter, a report indicating how the money provided by this subchapter was spent, which roads were worked on, and what other progress was made regarding the plan outlined to the General Assembly by the commission during the debate on this subchapter.

History. Acts 1985, No. 456, § 3; A.S.A. 1947, § 75-1280.

SUBCHAPTER 6 — ADDITIONAL TAXES ON MOTOR FUEL, DISTILLATE SPECIAL FUELS, AND LIQUEFIED GAS SPECIAL FUELS

SECTION.

26-56-601. Excise tax levied.

SECTION.

26-56-602. Additional funds deposited into State Treasury.

Effective Dates. Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being neces-

sary for the preservation of the public peace, health and safety shall be in full force and effect on and after the first day of the first month immediately following its passage and approval."

Acts 1991, Nos. 1040 and 1239, § 11: April 8, 1991, and Apr. 10, 1991, respectively. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that there is an immediate need for the construction and repair of the State Highway System. For these reasons, it is declared necessary for the preservation of the public peace, health, and safety that this Act become effective without delay. It is, therefore, declared that an emergency exists, and this Act shall take effect from the date of its passage and approval."

26-56-601. Excise tax levied.

(a) On and after March 6, 1991, in addition to the taxes levied upon motor fuel in §§ 26-55-205 and 26-55-1002 and upon distillate special fuel in §§ 26-56-201 and 26-56-502 and upon liquefied gas special fuels in §§ 26-56-301 and 26-56-502, and in addition to any other taxes levied on such fuel or fuels during the Seventy-Eighth Regular Session of the General Assembly, there is hereby levied an excise tax of five cents (5¢) per gallon upon all motor fuel and liquefied gas special fuels and an excise tax of two cents (2¢) per gallon upon all distillate special fuel subject to the taxes levied in §§ 26-55-205, 26-55-1002, 26-56-201, 26-56-301, and 26-56-502.

(b) Such additional taxes shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of other motor fuel taxes, distillate special fuel taxes, and liquefied gas special fuels taxes.

History. Acts 1991, No. 364, § 1; 1991, No. 382, § 1.

Publisher's Notes. Identical Acts Nos.

364 and 382, § 1, are also codified as § 26-55-1201.

26-56-602. Additional funds deposited into State Treasury.

(a) All of the additional taxes, fees, penalties and interest collected under the provisions of this subchapter and §§ 26-55-710, 26-56-214, and 26-56-304 shall be classified as special revenues and shall be deposited into the State Treasury. After deducting therefrom the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

(1) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

(2) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

(3) Seventy percent (70%) of the amount thereof to a special account in the State Highway and Transportation Department Fund to be designated the "1991 Highway Construction and Maintenance Account".

(b) The funds in the 1991 Highway Construction and Maintenance Account shall be held, managed, and used in the same manner and for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., excluding however, § 27-70-206.

(c) Provided that, in keeping with the spirit of Pub. L. No. 97-424, § 105, and the State Highway Commission's goals for encouraging the participation of disadvantaged business enterprises in entering into and performing contracts with the commission, including the purchasing of supplies and equipment by the commission and for the construction, reconstruction, and maintenance of highways and bridges in the state highway system, the commission is authorized to expend up to ten percent (10%) of the total funds and revenues available and disbursed to the commission pursuant to this act for the purposes of achieving those goals.

History. Acts 1991, No. 364, § 5; 1991, No. 382, § 5; 1991, No. 1040, §§ 5-8; 1991, No. 1239, §§ 5-8.

Publisher's Notes. Identical Acts 1991, Nos. 364 and 382, § 5, are also codified as § 26-55-1202.

Identical Acts 1991, Nos. 1040 and 1239, § 4, provided: "(a) This Act shall be liberally construed to accomplish the purposes thereof. This Act shall constitute the sole authority necessary to accomplish the purposes hereof, and to this end it shall not be necessary that the provisions of other laws pertaining to the development

of public facilities and properties and the financing thereof be complied with.

"(b) This Act shall be interpreted to supplement existing laws conferring rights and powers upon the Authority and the Commission, and the rights and powers set forth herein shall be regarded as alternative methods for the accomplishment of the purposes of this Act."

U.S. Code. Public Law 97-424, referred to in this section, is codified primarily as 23 U.S.C. § 101 et seq., 26 U.S.C. § 4041 et seq., and 26 U.S.C. § 6411 et seq.

SUBCHAPTER 7 — REFUNDS — MOTOR FUELS USED BY FIRE DEPARTMENTS

SECTION.

- 26-56-701. Definitions.
26-56-702. Applicability.
26-56-703. Refund permit.
26-56-704. Applications for refund.
26-56-705. Refund paid from Gasoline
Tax Refund Fund.

SECTION.

- 26-56-706. Records — Inspection.
26-56-707. Construction.
26-56-708. Director's powers.

A.C.R.C. Notes. References to “this chapter” in subchapters 1 through 6 may not apply to this subchapter which was enacted subsequently.

26-56-701. Definitions.

As used in this subchapter:

(1) “Director” means the Director of the Department of Finance and Administration or any of his or her deputies, employees, or agents;

(2) “Distillate special fuel” means distillate special fuel as defined in § 26-56-102;

(3)(A) “Fire truck” means fire department-owned firefighting apparatus used to respond to fire alarms, including, but not limited to, tanker trucks, pumper trucks, and equipment trucks.

(B) “Fire truck” does not include passenger vehicles and ambulances; and

(4) “Motor fuel” means motor fuel as defined in § 26-55-202.

History. Acts 2001, No. 419, § 1.

Publisher's Notes. Acts 2001, No. 419, § 1, is also codified as § 26-55-1301.

26-56-702. Applicability.

Any fire department that purchases motor fuel or distillate special fuel for use in fire trucks shall be entitled to a refund of the motor fuel tax or distillate special fuel tax paid.

History. Acts 2001, No. 419, § 2.

Publisher's Notes. Acts 2001, No. 419, § 2, is also codified as § 26-55-1302.

26-56-703. Refund permit.

(a) No fire department shall secure a refund of tax under this subchapter unless the fire department is the holder of an unrevoked permit which was issued by the Director of the Department of Finance and Administration before the purchase of the motor fuel or the distillate special fuel.

(b) The permit shall be numbered and shall entitle the fire department to make an annual application for refund under this subchapter.

(c) An application for the permit shall be filed with the director on forms prescribed by the director and shall contain such information as the director may require.

(d) No person shall knowingly make a false or fraudulent statement in an application for a refund permit or in an application for a refund of any taxes under this subchapter.

(e) The refund permit of any person who violates any provision of this subchapter shall be revoked by the director and shall not be reissued until two (2) years have elapsed after the date of the revocation.

History. Acts 2001, No. 419, § 3.

Publisher's Notes. Acts 2001, No. 419, § 3, is also codified as § 26-55-1303.

26-56-704. Applications for refund.

(a) The refund permit holder shall file with the Director of the Department of Finance and Administration an application for refund on forms furnished by the director which shall include, but not be limited to, the following information:

(1) The quantity of motor fuel and distillate special fuel purchased for use in its fire trucks;

(2) A statement that the motor fuel and distillate special fuel have been used exclusively in its fire trucks;

(3) The amount of the tax claimed to be refunded;

(4) The name, post office, and resident address of the fire department;

(5) The name and address of the sellers from whom the motor fuel and distillate special fuel were purchased; and

(6) Other information as the director shall require.

(b)(1) An application for a refund shall be accompanied by a paid receipt for the purchase price of motor fuel and distillate special fuel on which the refund is sought.

(2) The application shall be notarized and made to the director.

(c) All claims for a refund under the provisions of this subchapter shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(d)(1) The director shall promulgate a rule establishing the annual date for claiming a refund pursuant to this subchapter.

(2) A refund shall only be granted for a purchase of motor fuel and distillate special fuel made within one (1) calendar year of the annual date for claiming the refund.

History. Acts 2001, No. 419, § 4.

Publisher's Notes. Acts 2001, No. 419, § 4, is also codified as § 26-55-1304.

26-56-705. Refund paid from Gasoline Tax Refund Fund.

(a) All valid claims for refund of the motor fuel tax under the provisions of this subchapter shall be paid from the Gasoline Tax Refund Fund and shall be subject to the same conditions and limitations as provided under § 26-55-407, except that all the motor fuels covered by the provisions of this subchapter shall be subject to the full refund of the motor fuel taxes paid.

(b)(1)(A) The Director of the Department of Finance and Administration shall annually estimate the amount necessary to pay refunds to the users of distillate special fuel who are entitled to refunds with respect to distillate special fuel taxes paid in this state as authorized in this subchapter.

(B) Upon certification by the director, the Treasurer of State shall transfer from the gross amount of distillate special fuel taxes collected each month the amount so certified and shall credit the amount to the fund.

(2) The transfers from the distillate special fuel taxes collected each month shall be made after deducting allowances for bad checks or claims but before making any other distribution as provided by law.

(c)(1) All valid claims for refund of the distillate special fuel tax under the provisions of this subchapter shall be paid from the fund.

(2) The refund for purchases of distillate special fuel tax shall not include the moneys which have been pledged to the repayment of highway bonds under § 26-56-201.

(d) All warrants drawn against the fund that are not presented for payment within one (1) year after issuance shall be void.

(e) Neither the director nor any member or employee of the Department of Finance and Administration shall be held personally liable for making any refund by reason of a fraudulent claim filed as a basis for such a refund.

History. Acts 2001, No. 419, § 5.

Publisher's Notes. Acts 2001, No. 419, § 5, is also codified as § 26-55-1305.

26-56-706. Records — Inspection.

(a) The Director of the Department of Finance and Administration shall keep a permanent record by fire department of the amount of refund claimed and paid to each claimant.

(b) The records shall be open to public inspection.

History. Acts 2001, No. 419, § 6.

Publisher's Notes. Acts 2001, No. 419, § 6, is also codified as § 26-55-1306.

26-56-707. Construction.

Nothing in this subchapter shall be construed as an impairment of the obligation existing between the State of Arkansas and the holders of

Arkansas state highway bonds, whether the bonds have already been issued or may be issued in the future.

History. Acts 2001, No. 419, § 7.

Publisher's Notes. Acts 2001, No. 419, § 7, is also codified as § 26-55-1307.

26-56-708. Director's powers.

The Director of the Department of Finance and Administration may make, amend, and enforce regulations, subpoena witnesses and documents, administer oaths, and do and perform all other acts necessary to carry out the purpose and intent of this subchapter.

History. Acts 2001, No. 419, § 8.

Publisher's Notes. Acts 2001, No. 419, § 8, is also codified as § 26-55-1308.

CHAPTER 57

STATE PRIVILEGE TAXES

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. ARKANSAS TOBACCO PRODUCTS TAX ACT OF 1977.
3. SLOT AND VENDING MACHINES GENERALLY. [REPEALED.]
4. COIN-OPERATED AMUSEMENTS.
5. TRAVEL BUREAUS OR SERVICES.
6. INSURANCE PREMIUM TAXES.
7. INEDIBLE FATS AND OILS COLLECTORS. [REPEALED.]
8. ADDITIONAL TAX ON TOBACCO PRODUCTS.
9. ARKANSAS SOFT DRINK TAX ACT.
10. VENDING DEVICES SALES TAX.
11. TAX ON TOBACCO PRODUCTS TO FUND BREAST CANCER CONTROL AND RESEARCH.
12. VENDING DEVICES DECAL ACT OF 1997.
13. ENFORCEMENT ENHANCEMENTS.

RESEARCH REFERENCES

A.L.R. Sales, use, or privilege tax on sales of, or revenues from sales of advertising. 40 A.L.R.4th 1114.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — ARKANSAS TOBACCO PRODUCTS TAX ACT OF 1977

SECTION.

- 26-57-201. Title.
26-57-202. Legislative findings and purpose.

SECTION.

- 26-57-203. Definitions.
26-57-204. Violations.
26-57-205. Enforcement of subchapter.

SECTION.

- 26-57-206. Rules and regulations.
- 26-57-207. Business of handling, receiving, etc., a privilege.
- 26-57-208. Levy of tax — Rates of tax.
- 26-57-209. Exemption from tax.
- 26-57-210. Waiver of tax.
- 26-57-211. Wholesaler to pay taxes — Reports and remittance of tax. [As amended by Acts 1997, No. 434.]
- 26-57-211. Wholesaler to pay taxes — Reports and remittance of tax. [As amended by Acts 1997, No. 1337.]
- 26-57-212. Wholesalers, warehousemen — Reports, payment of tax, and records.
- 26-57-213. Invoices.
- 26-57-214. Registration and licensing required prior to doing business.
- 26-57-215. Permits and licenses — Types.
- 26-57-216. Permits and licenses — Number and location.
- 26-57-217, 26-57-218. [Repealed.]
- 26-57-219. Permits and licenses — Annual privilege tax.
- 26-57-220. Permits and licenses — Duration.
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- 26-57-233. Salesperson — Restrictions — Violations.

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- 26-57-234. Retailers and vendors — Restrictions — Violations.
- 26-57-235. Cigarette stamps generally.
- 26-57-236. Stamp deputies. [As amended by Acts 1997, No. 434.]
- 26-57-236. Stamp deputies. [As amended by Acts 1997, No. 1337.]
- 26-57-237. Cigarette stamps — Sale or delivery.
- 26-57-238. Cigarette stamps — Refund on unsold, returned cigarettes.
- 26-57-239. Consumer to require stamps affixed in proper manner.
- 26-57-240. Counterfeiting of stamps unlawful — Penalty.
- 26-57-241. Reuse of containers unlawful — Penalty.
- 26-57-242. Wholesaler — Transporting cigarettes with stamps affixed outside state for re-entry.
- 26-57-243. Unstamped and untaxed products — Personal possession limits.
- 26-57-244. Possession of untaxed, unstamped products — Notice and prima facie evidence.
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- 26-57-249. Sale of products upon conviction — Procedure.
- 26-57-250. Civil action to recover tax and penalties — Party defendants.
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- 26-57-252. No bond for costs required.
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26-57-256. Powers of the Arkansas Tobacco Control Board.

26-57-257. Director of Arkansas Tobacco Control Board.

26-57-258. Continuation of permits, licenses, regulations, etc., of

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Department of Finance and Administration.

26-57-259. Nonpreemption.

26-57-260. Definitions.

26-57-261. Requirements.

26-57-262. Sale of export cigarettes.

Effective Dates. Acts 1977, No. 546, § 41: July 1, 1977.

Acts 1979, No. 911, § 17: July 1, 1979.

Acts 1983, No. 255, § 5: Feb. 25, 1983.

Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Supreme Court recently held certain provisions of the Arkansas Tobacco Products Tax Act of 1977 relating to residency of wholesale cigarette and wholesale tobacco permit holders to be unconstitutional as a violation of the commerce clause of the United States Constitution since there was no stated relationship between the residency requirements and any valid governmental interests; that this Act is designed to clarify the intent and purpose of the residency requirement for wholesale cigarette and/or wholesale tobacco products dealers by recognizing the fact that smoking of cigarettes and use of other tobacco products can be hazardous to the health, safety and welfare of the people of Arkansas and that the State of Arkansas has a valid governmental interest in protecting the health, safety and welfare of her citizens; and that this Act is designed to recognize and establish such valid governmental interests and to reinstate the residency requirements for wholesale cigarette and wholesale tobacco products dealers and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 399, § 3: Mar. 10, 1983.

Emergency clause provided: "It is hereby found and determined by the General Assembly that the State is in urgent need of additional revenues to provide essential services to the citizens of this State; that the increase in the cigarette tax provided for in this Act will provide a portion of such urgently needed revenues and

should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 356, § 3: Mar. 15, 1985.

Emergency clause provided: "Prior to the passage of Act 399 of 1983, which amended Act 546 of 1977, cigarette vendors were considered to be the same as other retailers, and as a result of said Act, cigarette vendors were not permitted to purchase cigarettes for resale taxed at the same cigarette tax rate as for other retailers. The purpose of this amendment is to clarify that licensed retailers and licensed cigarette vendors are both retailers entitled to purchase cigarettes for resale at the same cigarette tax rate; and this act is necessary to correct the injustice created by Act 399 of 1983. Therefore, an emergency is declared to exist and this Act shall therefore become effective on and after its passage and approval."

Acts 1985, No. 684, § 5: Mar. 27, 1985.

Emergency clause provided: "It is hereby found and determined by the General Assembly that additional legislation is needed to protect the health and welfare of the citizens of this State who use tobacco, and that it is necessary that the Director of the Arkansas Health Department be authorized to inspect locations in Arkansas where cigarettes and tobacco products are sold or stored, to determine whether such cigarettes and tobacco products are fresh and not contaminated; because of the relatively high Arkansas cigarette tax of twenty-one cents (21¢) per package of cigarettes, the State may begin to experience losses of cigarette tax revenues as a result of bootlegging of untaxed cigarettes in this State; and that this Act should be given effect immediately to alleviate this situation. Therefore, an emergency is hereby declared to exist and this

Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 824, § 5: Apr. 4, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that additional legislation is needed to protect the health and welfare of the citizens of this State who use tobacco, and that it is necessary that the Director of the Arkansas Health Department be authorized to inspect locations in Arkansas where cigarettes and tobacco products are sold or stored, to determine whether such cigarettes and tobacco products are fresh and not contaminated; because of the relatively high Arkansas cigarette tax of twenty-one cents (21¢) per package of cigarettes, the State may begin to experience losses of cigarette tax revenues as a result of bootlegging of untaxed cigarettes in this State; and that this Act should be given effect immediately to alleviate this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 628, § 4: Apr. 4, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly of Arkansas that the excise tax on tobacco products does not presently extend to cover all commercially sold products made from tobacco and that to achieve tax equity in the taxation of tobacco products the excise tax for such products should extend to snuff as well as other products made from tobacco and that in order to correct this tax inequity, it is essential the tax on tobacco products include snuff in its application. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force from and after its passage and approval."

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that

purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 434, § 18: July 1, 1997. Emergency clause provided: "It is hereby found and determined that cancer is a leading cause of death among Arkansans; that, of cancer deaths, breast cancer claims more lives of women than any other type except lung cancer; that there are nineteen hundred (1900) new cases of breast cancer diagnosed each year; that breast cancer mortality rates have increased in Arkansas in recent years; that presently breast cancer is claiming the lives of over four hundred seventy (470) women in Arkansas each year; that this number of deaths will increase as our population grows older; that information barriers result in women being unaware of the risk of breast cancer or the value of early detection; that financial barriers prevent some women from taking advantage of mammography; and that there is a lack of funding for breast cancer research in the state; it is further found and determined that to reduce the number of lives continuing to be needlessly lost, it is necessary to increase the state tax on cigarettes and tobacco products to provide funding for breast cancer, to provide for screening, diagnostic, and treatment services for women at risk of developing breast cancer and to assure continuing research with respect to the cause, cure and prevention of breast cancer. This act will provide greatly needed revenues to fund essential research and services with respect to the cause, cure, detection and prevention of breast cancer, and breast cancer education in the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1997."

Acts 1997, No. 1337, § 30: became law without the Governor's signature. Noted Apr. 11, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the regulation of the manufacture, distribution, and sale of tobacco products in this state should be transferred from the Department of Finance and Administration to an indepen-

dent agency; that this act establishes the Arkansas Tobacco Control Board as such independent agency; that the transfer of duties should occur at the beginning of the next fiscal year; and that unless this emergency clause is adopted, the transfer will most likely not occur until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1997."

Acts 1997, No. 1359, § 41: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

Acts 1999, No. 1285, § 7: Apr. 7, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that smoking of cigarettes is not only hazardous to the health of the smoker but also presents serious public health concerns; that federal law and regulations establish various policies relating to the manufacture, importation and marketing of cigarettes; that it is urgent that state law be aligned with the federal laws and regulations as soon as possible to assure that consumers be adequately informed of the adverse effects of cigarette smoking; and that this act is designed to align Arkansas law with federal law to assure that only those cigarettes manufactured according to specifications and packed in containers labeled with appropriate warnings are available to Arkansas consumers and should be given effect immediately. Therefore, an

emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1368, § 6: Apr. 5, 2001. Emergency clause provided: "It is found and determined by the General Assembly that lack of compliance with state and local tax laws reduces the available revenues to fund the public schools and other essential state services, and that this act is designed and intended to ensure that adequate funding is available for those programs and to ensure full compliance with the tax laws of this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1669, § 38: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2001 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2001 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2001."

Acts 2001, No. 1698, § 4: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly that changes in distributions and funding sources must take place at the beginning of the state fiscal year in order to maintain approved accounting standards and to reduced confusion and that in the event of an extended session, this act may not take effect until after July 1 thereby placing the funding of the breast cancer program in jeopardy. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001."

Acts 2003, No. 1185, § 267: Jan. 1, 2005, by its own terms.

Acts 2005, No. 384, § 4: Mar. 31, 2005. Effective date clause provided: "Effective date. Section 1 shall apply to all funds placed into, due to be placed into, or being held in a qualified escrow account pursuant to Arkansas Code § 26-57-261 on or after March 31, 2005."

Acts 2005, No. 384, § 5: Feb. 24, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that smoking poses a serious health risk to Arkansans; that the Master Settlement Agreement is a critical component in reducing the rate of smoking in Arkansas; and that the provisions of this act are immediately necessary for the continued effective administration and enforcement of provisions of the Master Settlement Agreement in Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 71 Am. Jur. 2d, State Tax., § 615.

U. Ark. Little Rock L.J. Arkansas

Law Survey, Junean, Constitutional Law, 9 U. Ark. Little Rock L.J. 111.

26-57-201. Title.

This subchapter shall be known and may be cited as the "Arkansas Tobacco Products Tax Act of 1977".

History. Acts 1977, No. 546, § 1; A.S.A. 1947, § 84-4501.

CASE NOTES

Proceedings.

Even though the director for the Arkansas Tobacco Control Board sent the tobacco company an offer of settlement "recommending" a \$500 fine for the tobacco company which gave unlawful rebates to retailers, and the company accepted the offer, the defense of agency estoppel was not preserved, and because the evidence established that the company had paid

rebates to at least 28 Arkansas retail establishments, it was not arbitrary or capricious for the Board to reject the "recommendation" and impose a \$28,000 fine, and suspension of the company's permit for six months. *H.T. Hackney Co. v. Davis*, 353 Ark. 797, 120 S.W.3d 79 (2003).

Cited: *Wometco Servs., Inc. v. Gaddy*, 272 Ark. 452, 616 S.W.2d 466 (1981).

26-57-202. Legislative findings and purpose.

(a) It is recognized, found, and determined by the General Assembly that:

(1) The Surgeon General has determined that the smoking of cigarettes is detrimental to the health of the smoker;

(2) The General Assembly had already recognized this hazard many years ago when it enacted § 5-27-227 regulating the sale of tobacco to minors, §§ 20-27-701 — 20-27-703 [repealed] establishing a policy for public smoking, and this subchapter, to provide for close supervision and control of the sale of cigarettes and other tobacco products;

(3) The state has a very valid governmental interest in preserving and promoting the public health and welfare of its citizens; and

(4) It is the responsibility of the General Assembly to enact legislation to protect and further this essential governmental interest.

(b) It is therefore the intent of this subchapter to:

(1) Provide for the close supervision and control of the licensing of persons to sell cigarettes and other tobacco products in this state in order to assure that cigarettes and other tobacco products distributed in the state are fresh, not contaminated, and are properly taxed, stamped, stored, and distributed only to persons authorized to receive these products; and

(2) Impose licenses, fees, taxes, and restrictions on the privilege of dealing in or otherwise doing business in tobacco products in order to promote the public health and welfare of the citizens of this state and to protect the revenue collection procedures incorporated within this subchapter.

History. Acts 1977, No. 546, § 3; 1979, No. 911, § 5; 1983, No. 255, § 1; 1985, No. 684, § 1; 1985, No. 824, § 1; A.S.A. 1947, § 84-4503.

A.C.R.C. Notes. Sections 20-27-701 — 20-27-703 referred to in subdivision (a)(2) of this section were repealed by Acts 2006

(1st Ex. Sess.), No. 8, § 2. For current laws concerning public smoking, see §§ 20-27-704 — 20-27-709, the Arkansas Clean Indoor Air Act of 2006, § 20-27-1801 et seq., and the Arkansas Protection from Secondhand Smoke for Children Act of 2006, § 20-27-1901 et seq.

CASE NOTES

Cited: *Wometco Servs., Inc. v. Gaddy*, 272 Ark. 452, 616 S.W.2d 466 (1981); *Ark. Tobacco Control Bd. v. Santa Fe Natural*

Tobacco Co., 360 Ark. 32, 199 S.W.3d 656 (2004).

26-57-203. Definitions.

As used in this subchapter:

(1) “Annual” or “annually” means the fiscal year from July 1 through the next June 30;

(2) “Cigar” means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco, other than any roll of tobacco that is a cigarette under subdivision (3) of this section;

(3) “Cigarette” means any roll of tobacco wrapped in:

(A) Paper or in any substance not containing tobacco; or

(B) Any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to or purchased by consumers as a cigarette;

(4) "Consumer" means a member of the public at large;

(5) "First sale" means the sale of tobacco products made by a manufacturer to licensed wholesalers and licensed vendors or a licensed retailer only;

(6)(A) "General tobacco products vendor" means any person that operates a vending machine or that uses any other mechanical device from which cigarettes or other tobacco products are delivered to the consumer by inserting coins in the machine or device, and that purchases tobacco products only from licensed wholesalers.

(B) A general tobacco products vendor may operate licensed vending machines on the general tobacco product vendor's own premises and on the premises of others as a principal business;

(7) "Gross sales" means the amount received for tobacco products sold at retail, including both the federal and state taxes of the tobacco products when purchased by a retailer;

(8) "Licensed" means that the person has received a license or permit from the Director of the Arkansas Tobacco Control Board and is otherwise qualified to do business in this state, except that "licensed" does not mean that a person is registered as a manufacturer;

(9) "Manufacturer" means any person who produces any tobacco product for sale and includes, but is not limited to, importers and distributors that deal in tobacco products as manufacturers and that are required under this subchapter to sell only to licensed wholesalers or licensed retailers located in Arkansas;

(10) "Person" means any individual, retailer, wholesaler, manufacturer, firm, association, company, partnership, limited liability company, corporation, joint-stock company, club, agency, syndicate, the State of Arkansas, county, municipal corporation or other political subdivision of this state, receiver, trustee, fiduciary, or trade association;

(11) "Place of business" means the place where orders are taken or received or where tobacco products are sold;

(12) "Restricted tobacco products vendor" means a person that is licensed to operate vending machines owned by the person only on the person's own premises, and is otherwise subject to all other restrictions imposed on a general tobacco products vendor;

(13) "Retailer" means any person who purchases tobacco products from licensed wholesalers for the purpose of selling them over the counter at retail to consumers;

(14) "Salesperson" means the agent or employee of a wholesaler that sells or offers for sale to licensed wholesalers or licensed retailers or that solicits for sale, takes orders for, or in any manner promotes the sale or use of tobacco products;

(15)(A) "Stamps" means the Arkansas cigarette stamps denoting the tax on cigarettes.

(B) When affixed to a container of cigarettes, the stamps shall indicate that the tax has been paid;

(16) "Tobacco products" means all products containing tobacco for consumption and includes, but is not limited to, cigarettes, cigars, little cigars, cigarillos, chewing tobacco, smokeless tobacco, snuff, smoking tobacco, including pipe tobacco, and smoking tobacco substitutes;

(17) "Tobacco products vending machine" means any coin-operated vending machine from which tobacco products are sold;

(18) "Warehouse" means a place where tobacco products are stored for another person and to or from which place the tobacco products are shipped or delivered upon order by the owner of the tobacco products to the warehouse; and

(19)(A) "Wholesaler" means any person, not a manufacturer or owned or operated by a manufacturer, that does business within this state at or from an established place of business that purchases unstamped or untaxed cigarettes or other tobacco products directly from manufacturers that distribute tobacco products in Arkansas, and that sells to properly licensed cigarette vendors or retailers.

(B) However, where an Arkansas city is separated from a city in another state only by a state line, a person that is a resident of the Arkansas city that maintains a warehouse in the adjoining city in the adjoining state may qualify as a wholesaler under this subchapter if that person is regularly engaged in the sale of tobacco products to licensed retailers within Arkansas as a first sale and is eligible to purchase unstamped cigarettes direct from manufacturers.

History. Acts 1977, No. 546, § 2; 1979, No. 911, §§ 1-4; 1983, No. 255, § 2; A.S.A. 1947, § 84-4502; Acts 1987, No. 628, § 1; 1995, No. 1160, § 30; 1997, No. 1337, § 1; 2005, No. 1376, § 1; 2007, No. 827, §§ 227-229.

Amendments. The 2005 amendment inserted present (2), (3)(A) and (3)(B) and redesignated the remaining subdivisions accordingly; and substituted "any roll of tobacco wrapped in" for "all rolled tobacco,

or substitutes therefor, for smoking which is wrapped in paper or any substitute other than natural leaf tobacco in its natural state" in (3).

The 2007 amendment deleted "or 'vendor'" following "General tobacco products vendor" in (6)(A); in present (12), substituted "person that" for "vendor who" and "person only on the person's own" for "vendor on the vendor's"; and deleted former (15).

CASE NOTES

Constitutionality.

This section is not merely a burden on interstate commerce, it brings tobacco commerce to a halt at the borders unless it is conducted by Arkansans; thus, this section and § 26-57-217 are unconstitutional to the extent they prevent nonresidents from engaging in business in Arkansas. *Ragland v. McLane Co.*, 287 Ark. 216, 697 S.W.2d 892 (1985), questioned; *Ark. To-*

bacco Control Bd. v. Santa Fe Natural Tobacco Co., 360 Ark. 32, 199 S.W.3d 656 (2004).

Trial court erred in finding that the Arkansas Tobacco Control Board incorrectly interpreted the Tobacco Act as limiting retail sales to physical locations in the state and in holding that barring direct-to-consumer sales of cigarettes would violate the dormant Commerce Clause of

the United States Constitution; the Tobacco Control Board correctly interpreted the Tobacco Act to require cigarette retailers to sell face-to-face and such interpretation did not violate the dormant Com-

merce Clause. Ark. Tobacco Control Bd. v. Santa Fe Natural Tobacco Co., 360 Ark. 32, 199 S.W.3d 656 (2004).

Cited: Wometco Servs., Inc. v. Gaddy, 272 Ark. 452, 616 S.W.2d 466 (1981).

26-57-204. Violations.

Any person who violates any of the sections of this subchapter for which a specific penalty is not provided is guilty of a violation.

History. Acts 1977, No. 546, § 30; A.S.A. 1947, § 84-4530.

Cross References. Violations, §§ 5-1-108, 5-4-201.

26-57-205. Enforcement of subchapter.

It is the duty of all state, county, and city officers to enforce the provisions of this subchapter.

History. Acts 1977, No. 546, § 25; A.S.A. 1947, § 84-4525.

26-57-206. Rules and regulations.

The Director of the Department of Finance and Administration and the Director of the Arkansas Tobacco Control Board are empowered to promulgate rules and regulations for the proper enforcement of their powers and duties as specifically prescribed by this subchapter, except the Director of the Arkansas Tobacco Control Board shall have no authority to promulgate rules and regulations regarding manufacturers.

History. Acts 1979, No. 911, § 16; A.S.A. 1947, § 84-4523n; Acts 1997, No. 1337, § 2.

26-57-207. Business of handling, receiving, etc., a privilege.

The business of handling, receiving, possessing, storing, distributing, taking orders for, for soliciting orders of, selling, offering for sale, and dealing in, through sale, barter, or exchange, any cigarettes or other tobacco products is declared to be a privilege under the Arkansas Constitution and laws of the State of Arkansas.

History. Acts 1977, No. 546, § 3; 1983, No. 255, § 1; 1985, No. 684, § 1; 1985, No. 824, § 1; A.S.A. 1947, § 84-4503.

CASE NOTES

Cited: Wometco Servs., Inc. v. Gaddy, 272 Ark. 452, 616 S.W.2d 466 (1981).

26-57-208. Levy of tax — Rates of tax.

An excise or privilege tax is levied as follows:

(1)(A) The excise or privilege tax on cigarettes sold in this state is ten dollars and fifty cents (\$10.50) per one thousand (1,000) cigarettes sold.

(B)(i) Whenever there are two (2) adjoining cities each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in such adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside of Arkansas.

(ii) The tax shall not exceed the tax upon cigarettes imposed by this subchapter.

(C)(i) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line or in any Arkansas city which adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state.

(ii) The tax shall not exceed the tax upon cigarettes imposed by this subchapter.

(D)(i) The reduced border zone tax rates set forth in subdivisions (1)(B) and (C) of this section apply only to sales made at retail by Arkansas border zone retailers to actual consumers of the cigarettes.

(ii)(a) The sale of cigarettes by an Arkansas border zone retailer to any other retailer or wholesaler does not qualify for the reduced border zone tax rate.

(b) The full amount of Arkansas cigarette excise tax will be due on any cigarettes sold in such a manner;

(2)(A) The excise or privilege tax on tobacco products other than cigarettes on the sale by wholesalers to retailers, or by licensed retailers to the Director of the Department of Finance and Administration within the state is sixteen percent (16%) of the manufacturer's selling price.

(B) The tax shall be computed on the actual manufacturer's invoice price before discounts;

(3)(A)(i) The taxes levied by this section shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(ii) However, retailers shall be liable for reporting and paying these taxes when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(B)(i) Any taxpayer who fails to report and remit the tobacco tax due on tobacco products purchased from manufacturers, distributors, or wholesalers who are not licensed under § 26-57-214 shall be subject to the following penalties:

(a) Five percent (5%) of the total tobacco tax due for the first offense;

(b) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(c) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(ii) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(C) The provisions of this subdivision (3) shall not affect the provisions of § 26-57-228; and

(4) As provided in § 26-57-244, the director shall have the authority to make a direct assessment of excise tax against any person in possession of an untaxed tobacco product or unstamped cigarettes.

History. Acts 1977, No. 546, § 7; 1983, No. 399, § 1; 1985, No. 356, § 1; A.S.A. 1947, § 84-4507; Acts 1987, No. 628, § 2; 1997, No. 1337, § 3; 1999, No. 1246, § 1; 2007, No. 817, § 1.

Amendments. The 2007 amendment added (4).

CASE NOTES

Cited: Porter v. McCuen, 310 Ark. 562, 839 S.W.2d 512 (1992).

26-57-209. Exemption from tax.

Tobacco products sold to military departments of the United States or the State of Arkansas for resale on military bases within this state, and tobacco products sold and delivered to authorized purchasers outside this state for resale, and to other wholesalers licensed under this subchapter, are not subject to the taxes imposed by § 26-57-208.

History. Acts 1977, No. 546, § 7; 1979, No. 911, § 8; A.S.A. 1947, § 84-4507.

26-57-210. Waiver of tax.

The Director of the Department of Finance and Administration has the authority to waive the tax on any tobacco products donated or given to inmates of correctional institutions or patients of hospitals by any patriotic or charitable organization or by the United States Government in the manner prescribed by the director.

History. Acts 1977, No. 546, § 17; A.S.A. 1947, § 84-4517; Acts 1997, No. 1337, § 4.

26-57-211. Wholesaler to pay taxes — Reports and remittance of tax. [As amended by Acts 1997, No. 434.]

(a) Every wholesaler, or retailer who purchases tobacco products directly from the manufacturer shall pay the taxes levied by this subchapter.

(b)(1) On or before the fifteenth day of each month, every wholesaler shall file a report for the previous month's tax collections with the Director of the Department of Finance and Administration.

(2) The report shall provide the information prescribed by the director.

(c)(1) When the report is filed, the wholesaler shall remit therewith to the director ninety-eight percent (98%) of the tax due under §§ 26-57-1101 and 26-57-1102, as amended by § 26-57-803.

(2) Failure of the stamps deputy to remit such tax on or before the twentieth day of each applicable month shall cause the wholesaler to forfeit his or her claim to the discount, and the wholesaler must remit to the director one hundred percent (100%) of the amount of tax due, plus any penalty or interest due.

(d)(1) The director may add a penalty of ten percent (10%) of the tax due to the tax due for the failure to file a report or for the failure to remit the taxes at the time required, or for both.

(2) In the event the director determines there has been an attempt to evade the tax, a penalty of not more than fifty percent (50%) of the tax due shall be added to the tax due.

(e)(1)(A) In computing the amount of tax due under this subchapter and any act supplemental thereto, a wholesaler may deduct the cost of cigarette tax stamps and tobacco taxes lost through bad debts.

(B) Any deduction taken or refund paid attributable to bad debts shall not include interest.

(C) Bad debts incurred for sales made prior to August 13, 1993, shall not be deducted.

(D) Bad debts must be deducted within three (3) years of the date of the sale for which the debt was incurred.

(E) If a deduction is taken for a bad debt and the taxpayer subsequently collects the debt in whole or in part, the tax on the amount so collected shall be paid and reported on the next return due after the collection.

(2)(A) As used in this section, "bad debt" means any cigarette or tobacco tax which the wholesaler legally claims as a bad debt deduction for federal income tax purposes.

(B) "Bad debt" includes, but is not limited to, worthless checks, worthless credit card payments, and uncollectible credit accounts.

(C) "Bad debt" does not include financing charges or interest, uncollectible amounts on property that remains in the possession of the taxpayer or vendor until the full purchase price is paid, expenses incurred in attempting to collect any debt, debts sold or assigned to third parties for collection, and repossessed property.

History. Acts 1977, No. 546, § 8; A.S.A. 1947, § 84-4508; Acts 1993, No. 495, § 1; 1997, No. 434, § 7.

26-57-211. Wholesaler to pay taxes — Reports and remittance of tax. [As amended by Acts 1997, No. 1337.]

(a)(1)(A) The taxes levied by this subchapter shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(B) However, retailers shall be liable for reporting and paying these taxes when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(2)(A) Any taxpayer who fails to report and remit the tobacco tax due on tobacco products purchased from manufacturers, distributors, or wholesalers who are not licensed under § 26-57-214 shall be subject to the following penalties:

(i) Five percent (5%) of the total tobacco tax due for the first offense;

(ii) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(iii) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(B) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(3) The provisions of this subsection shall not affect the provisions of § 26-57-228.

(b)(1) On or before the fifteenth day of each month, every wholesaler shall file a report for the previous month's tax collections with the Director of the Department of Finance and Administration.

(2) The report shall provide the information prescribed by the director.

(c)(1) When the report is filed, the wholesaler shall remit the full amount of the tax due for the previous month to the director.

(2) In the event the payment of any tax due becomes delinquent, the taxpayer shall remit the full amount of the tax due plus penalty.

(d)(1) The director may add a penalty of ten percent (10%) of the tax due to the tax due for the failure to file a report or for the failure to remit the taxes at the time required, or for both.

(2) In the event the director determines there has been an attempt to evade the tax, a penalty of not more than fifty percent (50%) of the tax due shall be added to the tax due.

(e)(1)(A) In computing the amount of tax due under this subchapter and any act supplemental to this subchapter, a wholesaler may deduct the cost of cigarette tax stamps and tobacco taxes lost through bad debts.

(B) Any deduction taken or refund paid attributable to bad debts shall not include interest.

(C) A bad debt incurred for a sale made prior to August 13, 1993, shall not be deducted.

(D) A bad debt must be deducted within three (3) years of the date of the sale for which the debt was incurred.

(E) If a deduction is taken for a bad debt and the taxpayer subsequently collects the debt in whole or in part, the tax on the amount so collected shall be paid and reported on the next return due after the collection.

(2)(A) As used in this section, "bad debt" means any cigarette or tobacco tax which the wholesaler legally claims as a bad debt deduction for federal income tax purposes.

(B) "Bad debt" includes, but is not limited to, a worthless check, a worthless credit card payment, and an uncollectible credit account.

(C) "Bad debt" does not include financing charges or interest, an uncollectible amount on property that remains in the possession of the taxpayer or vendor until the full purchase price is paid, expenses incurred in attempting to collect any debt, a debt sold or assigned to a third party for collection, and repossessed property.

History. Acts 1977, No. 546, § 8; A.S.A. 1947, § 84-4508; Acts 1993, No. 495, § 1; 1997, No. 1337, § 5; 1999, No. 1246, § 2.

26-57-212. Wholesalers, warehousemen — Reports, payment of tax, and records.

(a)(1) Every licensed wholesaler and warehouse that handles, receives, stores, sells, and disposes of tobacco products in any manner in this state shall file a report with the Director of the Department of Finance and Administration on or before the fifteenth day of each month.

(2) Retailers shall be liable for reporting and paying these taxes when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(3)(A) Any taxpayer who fails to report and remit the tobacco tax due on tobacco products purchased from manufacturers, distributors, or wholesalers who are not licensed under § 26-57-214 shall be subject to the following penalties:

(i) Five percent (5%) of the total tobacco tax due for the first offense;

(ii) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(iii) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(B) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(4) The provisions of this subsection shall not affect the provisions of § 26-57-228.

(b) The report shall include:

(1) A statement of the tobacco products on hand at the beginning of the preceding month;

(2) The receipts and disbursements of tobacco products handled during the preceding month; and

(3) Any other information about the purchases and sales as may be prescribed by the director.

(c) All taxes due for the preceding month shall be remitted to the director at the time the report is filed.

(d)(1)(A) Every wholesaler and warehouse shall permit personnel of the Department of Finance and Administration and auditors of the Arkansas Tobacco Control Board to enter into and to inspect their stock of tobacco products and all books, invoices, and any documents and records relating to receipts and disbursements of tobacco products.

(B) Auditors shall not release to the board or to the public any information identifying customers of the manufacturer, wholesaler, or warehouse except when necessary to notify the board of alleged violations of this subchapter.

(2) However, the board shall have no authority under this subchapter or any other act, to require any manufacturer or other person to disclose any confidential, competitive commercial information furnished by a manufacturer, without that manufacturer's written permission.

(e)(1)(A) Every tobacco product wholesaler doing business in this state and whose main warehouse or headquarters is in another state, shall keep a record of all purchases and sales transactions involving cigarettes, cigars, cigarette papers, snuff, and other tobacco products.

(B) The record shall be maintained at a facility located in Arkansas.

(C) The record shall be accumulated on or before the twentieth day of each month covering the previous calendar month.

(2) Any person who fails to maintain records required by this section shall be subject to a fine of:

(A) One hundred dollars (\$100) for the first offense;

(B) Two hundred fifty dollars (\$250) for the second offense;

(C) Five hundred dollars (\$500) and a ninety-day suspension of license for the third offense; and

(D) One thousand dollars (\$1000) and permanent revocation of license for the fourth and subsequent offenses.

(f)(1)(A) All purchases of cigars, cigarettes, cigarette papers, smoking tobacco, and other tobacco products for distribution within the State of Arkansas by any nonresident tobacco products wholesaler shall be evidenced by a separate invoice from the seller correctly showing the date of purchase and the quantity of each of the articles purchased by the wholesaler for distribution within Arkansas.

(B) Such stock purchased for distribution within Arkansas shall be kept in an entirely separate part of the building, separate and apart from stock purchased for sale or distribution in another state.

(2) At the time of shipping or delivering any cigars, cigarettes, cigarette papers, smoking tobaccos, or other tobacco into the State of

Arkansas, every nonresident tobacco product wholesaler shall make a true duplicate invoice of the transaction which shall show full and complete details of the sale or delivery of those articles and shall retain the duplicate invoice, subject to use and inspection by the department and the board for a period of three (3) years.

(3) Nonresident tobacco wholesalers shall also keep a record of all cigarettes, cigarette papers, cigars, smoking tobaccos, and other tobacco products purchased by them for distribution within the State of Arkansas, and all books, records, and memoranda pertaining to the purchase and sale of such products shall be subject to inspection by the department and the board.

History. Acts 1977, No. 546, § 19; 893, § 1; 1997, No. 1337, §§ 6, 7; 1999, A.S.A. 1947, § 84-4519; Acts 1989, No. No. 1246, § 3.

26-57-213. Invoices.

(a) The tax shall be set out and identified on each invoice or statement as the "Arkansas Cigarette or Tobacco Products Excise Tax" as a separate billing or item.

(b) Copies of all invoices for the purchase or sale of any tobacco products shall be retained by each manufacturer, wholesaler, vendor, and retailer for a period of three (3) years, subject to examination by the Director of the Department of Finance and Administration and the Director of the Arkansas Tobacco Control Board or their authorized agents upon demand at any time during regular business hours, except that only the Director of the Department of Finance and Administration may examine the invoices of manufacturers.

History. Acts 1977, No. 546, § 7; 1979, No. 911, § 8; A.S.A. 1947, § 84-4507; Acts 1997, No. 1337, § 8.

26-57-214. Registration and licensing required prior to doing business.

(a) No person shall deal with or otherwise do business in tobacco products in this state without having first registered with the Director of the Arkansas Tobacco Control Board and obtained a permit or license for that purpose, except that a manufacturer need only to register in accordance with § 26-57-215(b)(1).

(b) All permits and licenses shall be issued by the director.

(c) A wholesaler, retailer, general tobacco products vendor, or restricted tobacco products vendor who intends to sell tobacco products at or from one (1) or more places of business owned, rented, or leased by it shall be required to obtain a separate license for each such place of business.

(d)(1) Any person licensed as a wholesaler shall not operate as a retailer unless a retailer's license is first secured.

(2) Any person licensed as a retailer shall not operate as a wholesaler unless a wholesaler's license is first secured.

(e) Any person who pleads guilty or nolo contendere to or is found guilty of buying, selling, or otherwise doing business in cigarettes or tobacco products in this state without first obtaining the appropriate license or permit is guilty of a Class C misdemeanor.

History. Acts 1977, No. 546, § 4; 1979, No. 911, § 7; A.S.A. 1947, § 84-4504; Acts 1997, No. 1337, § 9; 2003, No. 372, § 1.

Amendments. The 2003 amendment added (e). -

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Taxation. Tobacco Products, 26 U. Ark. Little Rock L. Rev. 495.

26-57-215. Permits and licenses — Types.

(a) Every person, except manufacturers, listed in this section, before commencing business, or if already in business, before continuing, shall pay an annual privilege fee and secure a permit or license from the Director of the Arkansas Tobacco Control Board.

(b)(1) Every manufacturer whose products are sold in this state shall register with the Director of Finance and Administration. A manufacturer so registered is not licensed for purposes of this subchapter.

(2) Every wholesaler of cigarettes who operates a place of business shall secure a wholesale cigarette permit and every wholesaler of any other tobacco products except cigarettes who operates a place of business shall secure a wholesale tobacco permit. Any wholesaler doing business in both cigarettes and other tobacco products shall secure both a wholesale cigarette permit and a wholesale tobacco permit.

(3) Every salesperson of any tobacco product in this state shall secure a salesperson's license. Application shall be made by the wholesaler or general tobacco products vendor who is the salesperson's employer. A salesperson's license is not transferable to another employer and must be surrendered to the Director of the Arkansas Tobacco Control Board by the employer upon termination of the salesperson's employment.

(4)(A) Every retailer of cigarettes who operates a place of business shall secure a retail cigarette permit and every retailer of any other tobacco products, except cigarettes, who operates a place of business shall secure a retail tobacco permit. Any retailer doing business in both cigarettes and other tobacco products shall secure both a retail cigarette permit and a retail tobacco permit.

(B) Retailers may secure temporary permits to operate at picnics, fairs, carnivals, circuses, or any other temporary public gathering for periods not to exceed ten (10) days for a fee of five dollars (\$5.00).

(5) Every person engaged in the business of selling, leasing, renting, or otherwise disposing of or dealing with any tobacco product vending machine in this state shall secure a dealer's license.

(6)(A)(i) Every general tobacco products vendor and every restricted tobacco products vendor must obtain a proper license from the Director of the Arkansas Tobacco Control Board. However, municipal corporations may license and tax the privilege of doing business as a general tobacco products vendor or restricted tobacco products vendor in cities where such vendors maintain an established place of business, provided that the machine license tax imposed may not exceed fifty percent (50%) of the amounts levied on such vendors' licenses under this subchapter.

(ii) If a municipality by ordinance licenses or taxes the privilege of doing business as a general tobacco products vendor or restricted tobacco products vendor, proof that such a license is in good standing shall be a mandatory condition for the issuance of a state license required under this section.

(B)(i) In addition, every general tobacco products vendor or restricted tobacco products vendor must obtain a permit stamp for each machine of any type placed in operation in this state for the purpose of vending any tobacco products. This stamp shall be affixed to the machine in a conspicuous location together with a decal or card reciting the name, address, and license number of the vendor operating the machine.

(ii) No stamp will be issued for any machine upon which the state gross receipts or state compensating tax has not been paid, and the Director of the Department of Finance and Administration shall require proof of payment before the initial issue of a stamp for any tobacco products vending machine.

History. Acts 1977, No. 546, § 5; 1979, No. 911, § 6; A.S.A. 1947, § 84-4505; Acts 1997, No. 1337, § 10.

26-57-216. Permits and licenses — Number and location.

The Arkansas Tobacco Control Board is empowered to determine in its reasonable discretion and in accordance with the provisions of this subchapter:

- (1) The number of licenses to be granted in the state;
- (2) The locations thereof; and
- (3) The persons to whom they are to be granted.

History. Acts 1977, No. 546, § 3; 1979, 684, § 1; 1985, No. 824, § 1; A.S.A. 1947, No. 911, § 5; 1983, No. 255, § 1; 1985, No. § 84-4503; Acts 1997, No. 1337, § 11.

CASE NOTES

Cited: Wometco Servs., Inc. v. Gaddy, 272 Ark. 452, 616 S.W.2d 466 (1981).

26-57-217, 26-57-218. [Repealed.]

Publisher's Notes. These sections, concerning permits and licenses, residency requirements and public hearings, were repealed by Acts 1997, No. 1337, § 12. They were derived from the following sources:

26-57-217. Acts 1977, No. 546, § 5;

1979, No. 911, § 6; 1983, No. 255, §§ 3, 4; A.S.A. 1947, §§ 84-4505, 84-4505.1.

26-57-218. Acts 1977, No. 546, § 3; 1979, No. 911, § 5; 1983, No. 255, § 1; 1985, No. 684, § 1; 1985, No. 824, § 1; A.S.A. 1947, § 84-4503.

26-57-219. Permits and licenses — Annual privilege tax.

(a) The annual privilege tax or fee for each permit or license authorized by § 26-57-215 is established as follows:

(1) Wholesale Cigarette Permit	\$ 500.00
(2) Wholesale Tobacco Permit	500.00
(3) General Tobacco Products Vending Permit (vendedor)	100.00
(4) Tobacco Products Vending Machine License, per machine	10.00
(5)(A) Retail Cigarette/Tobacco Permit for retailers whose weekly gross sales are less than \$5,000	20.00
(B) Retail Cigarette/Tobacco Permit for retailers whose weekly gross sales are between \$5,000 and \$15,000	30.00
(C) Retail Cigarette/Tobacco Permit for retailers whose weekly gross sales are in excess of \$15,000	50.00
(6) Salesperson's License	25.00
(7) Dealer's License	25.00
(8) Manufacturer's Representative Fee	25.00

(b)(1) All permits and licenses issued under this section shall expire on June 30 of the year following the effective date of issuance.

(2) Upon the failure to timely pay the annual privilege fee, a late fee of two (2) times the amount of any license or permit fee in question will be owed in addition to the annual privilege fee.

(3) No permit or license shall be issued to the applicant until the late fee and the license or permit fee has been paid.

(c) No permit or license issued under this section shall be renewed for a permit or license holder who is delinquent more than ninety (90) days on any privilege fee, tax relating to the sale or dispensation of cigarettes or tobacco products, or any other state and local tax due the Director of the Department of Finance and Administration.

(d) A person who is delinquent more than ninety (90) days on any state or local tax may not renew or obtain a permit or license issued under this section except upon certification that the permit or license holder has entered into a repayment agreement with the Department of Finance and Administration and that the person is current on the payments.

History. Acts 1977, No. 546, § 5; 1979, No. 911, § 6; A.S.A. 1947, § 84-4505; Acts 1997, No. 1337, § 13; 1997, No. 1359, § 22; 1999, No. 1591, §§ 6, 7; 2001, No. 1368, § 2.

A.C.R.C. Notes. As enacted by Acts 2001, No. 1368, § 2, subsection (c) began: "Beginning June 1, 2002,".

26-57-220. Permits and licenses — Duration.

All permits and licenses issued under this subchapter shall expire on June 30 of the year following the effective date of issuance.

History. Acts 1977, No. 546, § 5; A.S.A. 1947, § 84-4505.

26-57-221. Permits and licenses — Not transferable.

No license or permit is transferable, and the location of any place of business for which any license is issued may not be changed without permission of the Director of the Arkansas Tobacco Control Board.

History. Acts 1977, No. 546, § 5; 1979, No. 911, § 6; A.S.A. 1947, § 84-4505; Acts 1997, No. 1337, § 14.

26-57-222. Permits and licenses — Duplicates.

When a permit or license is lost by a holder, a duplicate permit or license may be issued upon application and for a fee of five dollars (\$5.00) when sufficient proof has been given the Director of the Arkansas Tobacco Control Board.

History. Acts 1977, No. 546, § 5; A.S.A. 1947, § 84-4505; Acts 1997, No. 1337, § 14.

26-57-223. Permits and licenses — Suspension or revocation.

(a) All permits and licenses issued under this subchapter may be suspended or revoked by the Director of the Arkansas Tobacco Control Board for any violation of this subchapter or the regulations pertaining to this subchapter.

(b) The director may revoke for one (1) year all licenses or permits to deal in tobacco products of any person who is convicted of violating this subchapter or the regulations pertaining to this subchapter a second time.

History. Acts 1977, No. 546, §§ 25, 30; A.S.A. 1947, §§ 84-4525, 84-4530; Acts 1997, No. 1337, § 14; 2001, No. 965, § 1.

CASE NOTES

Proceedings.

Even though the director for the Arkansas Tobacco Control Board sent the tobacco company an offer of settlement “recommending” a \$500 fine for the tobacco company which gave unlawful rebates to retailers, and the company accepted the offer, the defense of agency estoppel was not preserved, and because the evidence

established that the company had paid rebates to at least 28 Arkansas retail establishments, it was not arbitrary or capricious for the Board to reject the “recommendation” and impose a \$28,000 fine, and suspension of the company’s permit for six months. *H.T. Hackney Co. v. Davis*, 353 Ark. 797, 120 S.W.3d 79 (2003).

26-57-224. Vendor’s bond.

(a) Every vendor before beginning operation or commencing business in this state shall give bond to the State of Arkansas.

(b) The bond shall be conditioned upon the faithful performance of the duties and obligations imposed by this subchapter and the regulations promulgated by the Director of the Department of Finance and Administration.

- (c) The bond required shall be established by the following table:
- | | |
|------------------------------|------------|
| (1) Up to 30 machines | \$2,000.00 |
| (2) 31 to 60 machines | 3,000.00 |
| (3) 61 to 90 machines | 4,000.00 |
| (4) 91 to 120 machines | 5,000.00 |
| (5) Over 120 machines | 6,000.00 |
- (d) This bond shall be executed by a solvent surety company authorized to do business in this state or such other responsible surety approved by the director.

History. Acts 1977, No. 546, § 6; A.S.A. 1947, § 84-4506; Acts 1997, No. 1337, §§ 15, 16.

26-57-225. Failure to secure permit unlawful.

Any person required to pay taxes under the provisions of this subchapter who fails to secure a permit is guilty of a violation for the first and second offense and is guilty of a Class C misdemeanor for each additional offense.

History. Acts 1977, No. 546, § 28; A.S.A. 1947, § 84-4528.

26-57-226. Sale, delivery, etc., without license — Penalty.

Any person within the jurisdiction of this state who is not licensed to sell, deliver, or cause to be delivered tobacco products to consumers who sells, takes orders from, delivers, or causes to be delivered immediately or in the future any tobacco products to consumers, is guilty of a:

- (1) Class C misdemeanor for the first offense; and
- (2) Class B misdemeanor for each additional offense.

History. Acts 1977, No. 546, § 23; A.S.A. 1947, § 84-4523.

26-57-227. Operation of vending machine without license a public nuisance — Seizure and sale — Redemption.

(a) Any person who engages in the business of owning, operating, or leasing any tobacco product vending machines without first obtaining the license described in this subchapter is declared to be maintaining a public nuisance.

(b) Any tobacco product vending machine so operated may be seized and sold by the Director of the Arkansas Tobacco Control Board at public auction upon the order of the Pulaski County Circuit Court.

(c) These machines may be redeemed prior to sale by the owner upon the payment of all taxes due on the machine and all costs and expenses incurred in enforcing this section if the offender pays all taxes and costs within ten (10) days after seizure of the machines by the director.

History. Acts 1977, No. 546, § 28; A.S.A. 1947, § 84-4528; Acts 1997, No. 1337, § 17.

26-57-228. Purchases from unregistered, unlicensed dealers unlawful.

(a) It is unlawful for any retailer of tobacco products to purchase tobacco products from any person other than a registered manufacturer, licensed wholesaler, or other licensed retailer.

(b) Any retailer violating the provisions of this subchapter is guilty of a Class B misdemeanor for each purchase defined in subsection (a) of this section.

History. Acts 1977, No. 546, § 9; A.S.A. 1947, § 84-4509.

26-57-229. Licensee as wholesaler and retailer.

(a) A person who is licensed as a wholesaler and as a retailer shall maintain wholesale and retail stocks in separate buildings. However, this subsection shall not apply if stamps denoting payment of the tax on the wholesale stocks and the retail stocks of cigarettes are properly affixed.

(b) Every wholesaler who maintains a business as a retailer shall keep a record of his or her wholesale operations showing the amount of stamps purchased, if any, and all purchases from whatever source, and all sales whether to himself or herself as retailer or to another. This record shall be subject to inspection by the Department of Finance and Administration and the Arkansas Tobacco Control Board.

(c) Records shall be kept on forms prescribed by the Director of the Department of Finance and Administration.

(d) When a wholesaler refuses to keep the records required by or to comply with the provisions of this section, the Director of the Arkansas Tobacco Control Board shall revoke all permits that have been issued to the wholesaler.

History. Acts 1977, No. 546, § 20; A.S.A. 1947, § 84-4520; Acts 1997, No. 1337, § 18.

26-57-230. Common carriers.

(a) Common carriers transporting tobacco products may be required by the Director of the Department of Finance and Administration or the Arkansas Tobacco Control Board to give a statement of all consignments of tobacco products showing date, point of origin, point of delivery, and to whom delivered.

(b) All common carriers shall permit their records relating to shipment or receipt of tobacco products to be examined by the Department of Finance and Administration or the board.

(c) Any person who fails or refuses to give to the department or the board the statement, reports, or invoices required by this section or who refuses to permit the department or the board to examine the person's records is guilty of a Class C misdemeanor.

History. Acts 1977, No. 546, § 24; A.S.A. 1947, § 84-4524; Acts 1997, No. 1337, § 19.

26-57-231. Failure to allow inspection unlawful.

Any person required to pay taxes under the provisions of this subchapter who fails or refuses to permit the Department of Finance and Administration or the Arkansas Tobacco Control Board to examine or inspect the person's taxable stock of tobacco products, invoice books, papers, and memoranda considered necessary to secure information directly relating to the enforcement of this subchapter is guilty of a:

- (1) Violation for the first and second offense; and
- (2) Class C misdemeanor for each additional offense.

History. Acts 1977, No. 546, § 28; A.S.A. 1947, § 84-4528; Acts 1997, No. 1337, § 19.

26-57-232. Wholesalers — Restrictions — Criminal violations.

(a) A wholesaler shall conduct the wholesaler's business subject to the following restrictions:

- (1) The wholesaler shall secure a permit from the Director of the Arkansas Tobacco Control Board;

(2) Except as otherwise provided herein, the wholesaler may sell tobacco products only to persons properly licensed under this subchapter;

(3) The wholesaler before selling, delivering, or otherwise disposing of cigarettes to retailers in this state shall affix stamps of the proper denominations to show that the tax has been paid. The stamp shall be affixed in the manner prescribed by the Director of the Department of Finance and Administration; and

(4)(A) The wholesaler with each sale of cigarettes shall supply the retailer with an invoice showing the quantity, kind, and price of cigarettes sold, and shall supply the stamps required to show that the tax has been paid.

(B) The wholesaler shall retain a copy of this information in the wholesaler's files for three (3) years subject to the inspection by the Department of Finance and Administration and the Arkansas Tobacco Control Board.

(b) Any wholesaler who fails or refuses to affix or cancel the stamps or who fails or refuses to keep the records or who fails or refuses to furnish the statements and information or make the reports as required by this subchapter or as prescribed by the Director of the Department of Finance and Administration and the Director of the Arkansas Tobacco Control Board, or who violates any of the requirements of §§ 26-57-212, 26-57-229, and 26-57-242 is guilty of a violation for the first offense and a Class C misdemeanor for each additional offense.

History. Acts 1977, No. 546, §§ 11, 23; 1979, No. 911, § 9; A.S.A. 1947, §§ 84-4511, 84-4523; Acts 1997, No. 1337, § 19.

26-57-233. Salesperson — Restrictions — Violations.

Every salesperson who sells, offers for sale, takes orders, and solicits for sale any tobacco products for immediate or future delivery to wholesalers of tobacco products in this state may do so only under the following restrictions:

(1) The salesperson shall secure a permit from the Director of the Arkansas Tobacco Control Board;

(2) The salesperson may sell to or take orders for tobacco products from licensed wholesalers provided that the tobacco products are consigned or delivered only to registered manufacturers or licensed wholesalers;

(3) The salesperson may sell to or take orders for tobacco products from licensed retailers provided that the tobacco products shall be delivered to the retailer only by a licensed wholesaler;

(4)(A) The wholesaler shall keep complete records of all sales or orders taken for dealers in tobacco products in this state, copies of all invoices, orders taken, and other instruments as evidence of sales or disposition of tobacco products.

(B) The wholesaler shall retain this information in a designated place within this state for three (3) years subject to inspection by the Department of Finance and Administration and the Arkansas Tobacco Control Board.

History. Acts 1977, No. 546, §§ 10, 23; A.S.A. 1947, §§ 84-4510, 84-4523; Acts 1997, No. 1337, § 19.

26-57-234. Retailers and vendors — Restrictions — Violations.

(a) Retailers and vendors shall conduct their businesses subject to the following restrictions:

(1) Retailers and vendors not possess, place in their stock, have on their premises, sell, or otherwise dispose of any cigarettes to which stamps denoting the tax due thereon have not been affixed;

(2) Retailers and vendors require that properly cancelled stamps are affixed to all cigarettes purchased or otherwise received or accepted by them before they purchase or otherwise become the owner or possessor of the cigarettes;

(3) Retailers and vendors require from the wholesaler at the time of each purchase or receipt of cigarettes an invoice showing the quantity, kind, and price of the cigarettes and the stamps required to show that the tax has been paid, and date of sale or delivery;

(4) The retailer shall keep records showing the description and date of the receipt of each lot of tobacco products, from whom purchased, and when received on the premises, or any other requirements prescribed by the Director of the Department of Finance and Administration. These records shall be subject to inspection by the Department of Finance and Administration and the Arkansas Tobacco Control Board;

(5) The Director of the Department of Finance and Administration may require retailer reports covering receipts and sales of tobacco products monthly or for any other period;

(6) The retailer shall permit the department and the board or any peace officer acting under their direction to inspect the retailer's stock of merchandise and premises, including any room or building used in connection with the retailer's business.

(b) Upon a retailer's failure to comply with any part of this section, the Director of the Arkansas Tobacco Control Board may revoke the retailer's permit.

(c) Any retailer or vendor who fails or refuses to retain in his or her files invoices of tobacco products and stamps, or who fails or refuses to furnish the statements and information or make the reports concerning receipts and sales of tobacco products as required by this subchapter or prescribed by the Director of the Department of Finance and Administration, or who violates any of the requirements of this section, is guilty of a violation.

History. Acts 1977, No. 546, §§ 22, 23; §§ 84-4522, 84-4523; Acts 1997, No. 1337, 1979, No. 911, §§ 10-12; A.S.A. 1947, § 19.

26-57-235. Cigarette stamps generally.

(a) The purpose of the stamps is to provide a method for collecting the tax imposed on cigarettes sold in this state.

(b) The Director of the Department of Finance and Administration shall prescribe the kind of stamps to be used in the administration of this subchapter.

(c)(1) The director shall prepare and maintain an adequate supply of cigarette stamps.

(2) The director shall require a printer's certificate with each set of stamps delivered.

(3) The cost of printing the stamps shall be paid from the appropriation made for the administration of the Department of Finance and Administration.

(4)(A) All stamps prescribed by the director for affixation to cigarette packages shall be designed and furnished in such a fashion as to permit identification of the person that affixed the stamp to the particular package of cigarettes by means of a number or other mark on the stamp.

(B) The department shall maintain for not less than three (3) years information identifying the person that affixed the tax stamp to each package of cigarettes, which information shall not be confidential or exempt from disclosure to the public.

History. Acts 1977, No. 546, § 12; 699, § 1; 1997, No. 1337, § 19; 2001, No. A.S.A. 1947, § 84-4512; Acts 1989, No. 1545, § 3.

CASE NOTES

Cited: Ark. Tobacco Control Bd. v. Santa Fe Natural Tobacco Co., 360 Ark. 32, 199 S.W.3d 656 (2004).

26-57-236. Stamp deputies. [As amended by Acts 1997, No. 434.]

(a) The Director of the Department of Finance and Administration shall furnish stamps to licensed wholesalers directly or through stamp deputies.

(b) The director may appoint and commission stamp deputies, who shall be the owners or officers of wholesalers, to handle the stamps and collect the tax on cigarettes before sales of cigarettes are made to the retailers.

(c) Stamp deputies within the scope of their authority are agents of the director and shall be accountable as such for any wrongful acts.

(d) Each stamp deputy shall furnish a bond in an amount and in the form as prescribed by the director.

(e) A stamp deputy's open account shall not exceed seventy-five percent (75%) of the total amount of the bond provided by the stamp deputy.

(f) Stamp deputies shall keep records of all stamp sales and tax collections and shall make the reports prescribed by the director.

(g)(1) A commission shall be paid by the director to stamp deputies for the sales and collection of cigarette tax stamps and for affixing the tax stamps to each package of cigarettes.

(2) The commission shall not be less than three and eight-tenths percent (3.8%) of the total aggregate cigarette tax collected.

(h)(1) All deposits held by any bank for a stamp deputy which represent the sales of stamps are trust funds and shall be held as a special deposit.

(2) In the event of the failure or insolvency of the bank, the deposits shall be classed and considered as preferred claims due the State of Arkansas.

History. Acts 1977, No. 546, §§ 13, 14; 1997, No. 434, § 8; 2001, No. 1669, § 32; A.S.A. 1947, §§ 84-4513, 84-4514; Acts 2001, No. 1698, § 1.

26-57-236. Stamp deputies. [As amended by Acts 1997, No. 1337.]

(a) The Director of the Department of Finance and Administration shall furnish stamps to licensed wholesalers directly or through stamp deputies.

(b) The director may appoint and commission stamp deputies who shall be the owners or officers of wholesalers to handle the stamps and collect the tax on tobacco products before sales of tobacco products are made to the retailers.

(c) Stamp deputies within the scope of their authority are agents of the director and shall be accountable as such for any wrongful acts.

(d) Each stamp deputy shall furnish a bond in an amount and in the form as prescribed by the director.

(e) Stamp deputies shall keep records of all stamp sales and tax collections and shall make the reports prescribed by the director.

(f) A commission shall be paid by the director to stamp deputies for the sale of stamps for cigarettes and the collection of cigarette taxes. The commission paid shall not be less than three and eight-tenths percent (3.8%) of the total aggregate cigarette tax collected.

(g) All deposits held by any bank for a stamp deputy which represent the sales of stamps are trust funds and shall be held as a special deposit. In the event of the failure or insolvency of the bank, the deposits shall be classed and considered as preferred claims due the State of Arkansas.

History. Acts 1977, No. 546, §§ 13, 14; A.S.A. 1947, §§ 84-4513, 84-4514; Acts 1997, No. 1337, § 19.

26-57-237. Cigarette stamps — Sale or delivery.

(a) The Director of the Department of Finance and Administration or the director's stamp deputy may sell or deliver cigarette stamps only to licensed wholesalers.

(b) No person shall have in his or her possession any cigarette stamps except such as have been issued in the regular way in the manner provided for in this subchapter.

(c)(1) Any cigarette or tobacco products wholesaler or any other person required by law to affix cigarette tax stamps to cigarettes sold or offered for sale in this state shall have the option to receive the stamps directly from the director or to request that the stamps be shipped to the person in a manner to be selected by the director.

(2) When the stamps are shipped to the wholesaler or other person, the shipping and insurance cost shall be borne by the wholesaler. The wholesaler or other person to whom the stamps are shipped shall be liable for payment of the stamps only upon actual receipt thereof.

(3) The receipt of tax stamps by a cigarette or tobacco products wholesaler or other person to whom the stamps are shipped shall be evidenced by a written receipt signed by the person to whom the stamps are shipped or a person designated by him or her.

(4) A wholesaler or other person who chooses a method of shipment other than the method selected by the director shall pay the director for the stamps prior to shipment.

History. Acts 1977, No. 546, § 15;
A.S.A. 1947, § 84-4515; Acts 1987, No.
725, § 1; 1997, No. 1337, § 19.

26-57-238. Cigarette stamps — Refund on unsold, returned cigarettes.

When cigarettes to which stamps have been affixed are unsold and are returned by the retailer or the wholesaler who paid tax on them to the wholesaler or manufacturer from whom they were originally purchased, refund of the tax paid on such cigarettes may be made in the manner prescribed by the Director of the Department of Finance and Administration.

History. Acts 1977, No. 546, § 16;
A.S.A. 1947, § 84-4516; Acts 1997, No.
1337, § 19.

26-57-239. Consumer to require stamps affixed in proper manner.

Every consumer shall require when he or she purchases, receives, takes into his or her possession, or has delivered upon his or her premises cigarettes in packages, cartons, or other containers, that the proper stamps be affixed in the manner required by this subchapter to show that the tax has been paid thereon.

History. Acts 1977, No. 546, § 18;
A.S.A. 1947, § 84-4518.

26-57-240. Counterfeiting of stamps unlawful -- Penalty.

Any person who falsely and fraudulently makes, forges, or counterfeits any stamps prescribed for use in the administration of this subchapter or who knowingly and willfully has in his or her possession or who knowingly or willfully utters, publishes, passes, or tenders as true any false, altered, forged, previously used, or counterfeit stamps prescribed for such use is guilty of a felony and upon conviction shall be punished as is provided by § 5-1-106(c).

History. Acts 1977, No. 546, § 29;
A.S.A. 1947, § 84-4529.

26-57-241. Reuse of containers unlawful — Penalty.

Any person who reuses or refills with cigarettes any box, package, or container from which tax paid tobacco products have been removed is guilty of a Class D felony.

History. Acts 1977, No. 546, § 29; substituted “Class D felony” for “felony
A.S.A. 1947, § 84-4529; Acts 2005, No. and upon conviction shall be punished as
1994, § 245. is provided by § 5-1-106(c).”

Amendments. The 2005 amendment

26-57-242. Wholesaler — Transporting cigarettes with stamps affixed outside state for reentry.

(a) Every wholesaler of tobacco products doing business at or from an established place of business located within this state and authorized to purchase untaxed tobacco products on an open account directly from manufacturers who have general distribution of tobacco products in Arkansas, and who sell to licensed retailers, are prohibited from transporting cigarettes to which stamps have been affixed outside the boundaries of the State of Arkansas for warehousing or reentry into this state, or both, for either sale or resale.

(b) The prohibition contained in this section does not apply to any wholesaler of tobacco products who was actually engaged in and had established distribution practice of transporting cigarettes upon which the Arkansas stamp had been affixed outside the boundaries of the State of Arkansas for warehousing or reentry into the State of Arkansas, or both, for sale or resale on or before January 1, 1972.

(c) Upon violation of this section by a wholesaler, the Director of the Arkansas Tobacco Control Board shall revoke the wholesaler's permit.

History. Acts 1977, No. 546, § 21;
A.S.A. 1947, § 84-4521; Acts 1997, No.
1337, § 20.

26-57-243. Unstamped and untaxed products — Personal possession limits.

The possession limit of tobacco products by any person, upon his or her person or in his or her personal luggage for his or her personal use, not taxed or stamped in accordance with the provisions of this subchapter, is as follows:

(1) One (1) carton of ten (10) packages plus one (1) package of twenty (20) cigarettes. A person purchasing cigarettes from a United States military base or installation may have in his or her possession three (3) cartons of ten (10) packages;

(2) One (1) box of fifty (50) cigars, small cigars, or cigarillos; or

(3) Three pounds (3 lbs.) of smoking tobacco.

History. Acts 1977, No. 546, § 27;
A.S.A. 1947, § 84-4527; Acts 1997, No.
880, § 1.

26-57-244. Possession of untaxed, unstamped products — Notice and prima facie evidence.

(a) It is unlawful for any person to receive or have in his or her possession for sale, consumption, or any other purpose, any untaxed tobacco products or unstamped cigarettes unless the tax prescribed by this subchapter has been paid directly to the Director of the Department of Finance and Administration by the person in possession of the untaxed tobacco products or unstamped cigarettes.

(b) The absence of the stamps from any container of cigarettes is notice to all persons that the tax has not been paid and is prima facie evidence of the nonpayment of the tax.

(c) If tax has been paid to the director on any untaxed tobacco products or unstamped cigarettes, a consumer may establish proof of such payment by providing a receipt or any other documentation that clearly indicates that the tax was paid.

(d) The provisions of this section do not relieve any retail cigarette and tobacco permit holder from the obligations placed on them by § 26-57-228.

(e) No retail cigarette or tobacco permit holder shall have in his or her possession any unstamped cigarettes nor shall he or she have in his or her possession any tobacco products on which the tax prescribed by this subchapter has not been paid.

(f)(1) An Arkansas consumer who purchases any untaxed tobacco products or unstamped cigarettes shall be liable for reporting and remitting all excise tax due on such tobacco products or cigarettes as levied under this subchapter.

(2) The tax due shall be reported on forms provided by the director on or before the fifteenth day of the month following the month in which the untaxed purchase was made.

(3) The report shall provide the information prescribed by the director.

(4) When a report is filed, the consumer shall remit the full amount of tax due on the untaxed purchase to the director.

(g) The director is authorized to directly assess the excise tax due on any untaxed tobacco products or unstamped cigarettes against a consumer who purchases such items and fails to report and remit the excise tax due in a timely manner.

(h) Subsections (f) and (g) of this section shall be subject to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(i) The provisions of this section shall not apply to wholesalers and common carriers.

History. Acts 1977, No. 546, § 26; A.S.A. 1947, § 84-4526; Acts 2007, No. 817, § 2. rewrote (a); inserted present (c) through (h); and redesignated former (c) as present (i).

Amendments. The 2007 amendment

CASE NOTES

ANALYSIS

Common Carriers.

Prima Facie Evidence.

Common Carriers.

Wisconsin resident who was trucking a load of cigarettes from Missouri to Texas via a direct route who made full disclosure at the port of entry that his cargo consisted of cigarettes was in interstate commerce and not subject to Arkansas cigarette tax. *Pfeiffer v. State*, 226 Ark. 825, 295 S.W.2d 365 (1956) (decision under prior law).

Prima Facie Evidence.

Absence of proper stamps from tobacco products raised a presumption of nonpayment of the tax. *Gates v. Hughson*, 186 Ark. 348, 53 S.W.2d 581 (1932) (decision under prior law).

In an action for tax and penalties on unstamped cigarettes, the state needed to show only possession as the absence of stamps made a prima facie showing casting on the defendant the law's contemplated burden. *Thompson v. Holmes*, 222 Ark. 233, 258 S.W.2d 236 (1953), decision under prior law).

26-57-245. Unstamped products or products with unpaid taxes — Purchase, sale, receipt, etc., a criminal offense.

Except as otherwise authorized by this subchapter, any person who purchases, sells, offers for sale, receives, possesses, or transports upon his or her person, on his or her premises, or in his or her vehicle any cigarettes which do not have affixed thereon the stamps required by this subchapter, or any other tobacco products upon which the taxes imposed by this subchapter have not been paid, is guilty of a criminal offense that is a:

(1) Class C felony if the tax value of the total amount of tobacco products is equal to or exceeds one hundred dollars (\$100);

(2) Class A misdemeanor if the tax value of the total amount of tobacco products is less than one hundred dollars (\$100).

History. Acts 1977, No. 546, § 23; 1979, No. 911, § 12; A.S.A. 1947, § 84-4523.

26-57-246. Possession of improperly handled products as prima facie evidence.

The possession of tobacco products which have not been handled according to this subchapter by any person shall be prima facie evidence that that person intended to evade the tax thereon in order to cheat and defraud the State of Arkansas.

History. Acts 1977, No. 546, § 25;
A.S.A. 1947, § 84-4525.

26-57-247. Seizure and disposition of improperly handled products.

(a) Any cigarettes to which stamps have not been affixed as provided in this subchapter are subject to seizure and shall be held as evidence for prosecution.

(b) The Director of the Arkansas Tobacco Control Board may seize and hold for disposition of the courts all tobacco products found in the possession of any person dealing in or a consumer of tobacco products which have not been handled according to this subchapter.

History. Acts 1977, No. 546, § 25;
A.S.A. 1947, § 84-4525; Acts 1997, No.
1337, § 21.

26-57-248. Possession or sale of products with unpaid taxes — Supplemental fines — Liquidated damages.

(a) Any person who places in his or her stock or who has in his or her possession or on his or her premises, or who sells or offers for sale, any tobacco products on which the tax prescribed by law has not been paid in addition to the other fines and forfeitures shall be subject to a fine of:

(1) Twenty-five dollars (\$25.00) for each package of cigarettes, little cigars, and cigarillos up to twenty (20) packages and fifty dollars (\$50.00) for each package in excess of twenty (20) packages, so held, sold, or offered for sale; and

(2) Fifty dollars (\$50.00) for each box of cigars and twenty-five dollars (\$25.00) for each unit of other tobacco products so held, sold, or offered for sale.

(b) The penalty shall be held to be in the nature of liquidated damages and may be collected by civil action.

History. Acts 1977, No. 546, § 27;
1985, No. 684, § 2; 1985, No. 824, § 2;
A.S.A. 1947, § 84-4527.

26-57-249. Sale of products upon conviction — Procedure.

(a) Upon conviction of any defendant charged with the violation of this subchapter, the court shall issue an order to destroy the tobacco products confiscated by the Director of the Arkansas Tobacco Control

Board, or by any state, county, or municipal officer in this state, which were possessed or owned by the defendant and which have not been handled according to the provisions of this subchapter.

(b) Every court of record in this state shall notify the director of the disposition made of each case in the court as to whether the defendant was convicted or acquitted.

History. Acts 1977, No. 546, § 34; A.S.A. 1947, § 84-4534; Acts 1997, No. 1337, § 22; 2001, No. 966, § 1.

26-57-250. Civil action to recover tax and penalties — Party defendants.

(a) When the Director of the Department of Finance and Administration finds from investigation that the state has lost tax revenue because of the evasion of any provision of this subchapter, the director may bring suit in the proper court to recover such tax and penalties.

(b) The action shall lie against the person evading the tax and against any person who aided, abetted, or assisted in such evasion.

History. Acts 1977, No. 546, § 31; A.S.A. 1947, § 84-4531; Acts 1997, No. 1337, § 22.

26-57-251. Civil and criminal actions brought in name of director — Prosecution.

(a) All civil actions arising under this subchapter shall be brought by and in the name of the Director of the Department of Finance and Administration or the Director of the Arkansas Tobacco Control Board, whichever is appropriate under the provisions of this subchapter.

(b) All criminal actions shall be brought and prosecuted by the proper prosecuting attorney.

History. Acts 1977, No. 546, § 32; A.S.A. 1947, § 84-4532; Acts 1997, No. 1337, § 22.

26-57-252. No bond for costs required.

No bond for costs shall be required of the Department of Finance and Administration or the Arkansas Tobacco Control Board in any court in this state for the prosecution of any violation of this subchapter.

History. Acts 1977, No. 546, § 33; A.S.A. 1947, § 84-4533; Acts 1997, No. 1337, § 22.

26-57-253. Criminal actions — Appeals.

(a) In all prosecutions in the district courts and city courts or other courts of this state, the State of Arkansas shall have the same right of appeal to the circuit courts of this state and upon the same terms as the defendant now has under the law in misdemeanor cases.

(b) When appealed, the cases shall be tried de novo by the circuit court.

History. Acts 1977, No. 546, § 33; A.S.A. 1947, § 84-4533; Acts 2003, No. 1185, § 267.

substituted “district and city” for “municipal, police and justice” in (a).

Effective Dates. Acts 2003, No. 1185, § 267: Jan. 1, 2005, by its own terms.

Amendments. The 2003 amendment

26-57-254. Health inspections.

In order to assure that the citizens of this state receive only tobacco products which are fresh and not contaminated, the Director of the Department of Health is authorized under this subchapter to make reasonable inspection of any tobacco products in places of storage or distribution authorized under this subchapter and may require any such tobacco products found to be contaminated or not fresh be removed from stock and be returned to the proper wholesaler or manufacturer for disposal according to law.

History. Acts 1977, No. 546, § 3; 1979, No. 911, § 5; 1983, No. 255, § 1; 1985, No. 684, § 1; 1985, No. 824, § 1; A.S.A. 1947, § 84-4503.

CASE NOTES

Cited: Wometco Servs., Inc. v. Gaddy, 272 Ark. 452, 616 S.W.2d 466 (1981).

26-57-255. Arkansas Tobacco Control Board.

(a) There is hereby created the Arkansas Tobacco Control Board to consist of eight (8) members appointed by the Governor. The board shall be constituted as follows:

(1) Two (2) members of the board shall be tobacco products wholesalers;

(2) Two (2) members of the board shall be tobacco products retailers; and

(3) Four (4) members of the board shall be members of the public at large who are not public employees or officials, at least one (1) of which shall be an African American, and two (2) of whom shall be selected from a list of at least eight (8) candidates supplied to the Governor by the Arkansas Medical Society.

(b) The Governor shall designate which member of the board shall act as chair and that person shall serve as chair for two (2) years unless his or her membership on the board ceases prior to the end of the two-year period.

(c)(1) All members of the board must be residents of the State of Arkansas and confirmed by the Senate.

(2) The term of office shall be five (5) years, except that the initial board shall be appointed to staggered terms in that the term of one (1) member expires each year.

(d)(1) The board shall have responsibility for the issuance, suspension, and revocation of the licenses and permits enumerated in § 26-57-219.

(2) All action by the board shall be by a majority vote of the full membership of the board, and the board may take no official action in connection with any matter except at a regular or special meeting. In the event of a tie vote of the members of the board, the Director of the Arkansas Tobacco Control Board may cast the deciding vote.

(3) The board shall have no jurisdiction over manufacturers of tobacco products.

(e) No person who is not a citizen of the United States and who has not resided in the State of Arkansas for at least two (2) consecutive years immediately preceding the date of appointment may be appointed to the board nor employed by the board.

(f) Each member of the board and the director shall take and subscribe to an oath that he or she will support and enforce the provisions of this subchapter, the tobacco control laws of this state, the Arkansas Constitution, and the United States Constitution.

History. Acts 1997, No. 1337, § 23.

26-57-256. Powers of the Arkansas Tobacco Control Board.

(a) The Arkansas Tobacco Control Board shall:

(1) Promulgate regulations for the proper enforcement and implementation of this subchapter and the Unfair Cigarette Sales Act, § 4-75-701 et seq., subject to the restrictions in § 26-57-212(d);

(2) Receive applications for and issue, refuse, suspend, and revoke licenses and permits listed in § 26-57-219;

(3) Prescribe forms of applications for permits and licenses under this subchapter;

(4)(A) Cooperate with the Revenue Division of the Department of Finance and Administration in the enforcement of the tax laws affecting the sale of tobacco products in this state and in the enforcement of all other state and local tax laws.

(B) To facilitate efforts to cooperate with the division concerning the enforcement of all other state and local tax laws, the board shall immediately require that the following additional information be provided by all applicants for permit issuance or renewal:

(i) Federal tax identification numbers issued by the Internal Revenue Service;

(ii) Social Security numbers; and

(iii) State sales tax account numbers assigned by the Department of Finance and Administration, if applicable.

(C)(i) Each year the board shall provide a list of all applicants for the issuance or renewal of all tobacco permits and licenses to the Director of the Department of Finance and Administration.

(ii) This list shall contain the identifying information required by subdivision (a)(4)(B) of this section as well as the name of the permittee and the permittee's current business address;

(5)(A) Conduct public hearings when appropriate regarding any permit and license authorized by this subchapter or in violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-701 et seq., § 5-27-227, or any other federal, state, or local statute, ordinance, rule, or regulation concerning the sale of tobacco products to minors or the rules and regulations promulgated by the board.

(B)(i) After a notice and hearing held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., if the board finds a violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-701 et seq., or the rules and regulations promulgated by the board, the board may suspend, revoke, or not renew any or all permits and licenses issued by the board to any person or entity.

(ii) In addition, the board may levy a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each violation against any person or entity found to be in violation.

(iii) Each day of the violation shall be deemed a separate violation.

(C) In that regard, the board may examine or cause to be examined under oath any witness and the books and records of any licensee, person, or entity; and

(6) When requested by the written petition of at least three (3) interested parties, conduct public hearings to receive testimony on the facts relevant to the issuance of any license or permit under this subchapter.

(b) Unless the civil penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the Director of the Arkansas Tobacco Control Board shall have the power to institute a civil action in the Pulaski County Circuit Court to recover the civil penalties assessed pursuant to the provisions of this subchapter.

(c)(1) The board shall have no authority in criminal prosecutions or the assessment or collection of any taxes or penalties related to the taxing of tobacco products.

(2) However, the board shall refuse to issue, suspend, revoke, or refuse renewal of any permit or license issued by the board for the failure to pay taxes or fees imposed on tobacco products or any permit or license fees imposed by this subchapter or any other state and local taxes.

History. Acts 1997, No. 1337, § 23; 2001, No. 1368, § 3, present subdivision 1999, No. 1591, § 4; 2001, No. 1368, §§ 3, (a)(4)(C)(i) began: "Beginning January 1, 4. 2002, and each year thereafter,".

A.C.R.C. Notes. As enacted by Acts

CASE NOTES

ANALYSIS

Construction With Other Law.
Proceedings.

Construction With Other Law.

Subdivision (a)(5) of this section clearly permits the Arkansas Tobacco Control Board to conduct hearings regarding any permit or license in violation of the Unfair Cigarette Sales Act, codified at § 4-75-701 et seq., and the Act encompasses § 4-75-708 and §§ 4-75-701 and 708. *H.T. Hackney Co. v. Davis*, 353 Ark. 797, 120 S.W.3d 79 (2003).

Arkansas Tobacco Control Board sent the tobacco company an offer of settlement "recommending" a \$500 fine for the tobacco company which gave unlawful rebates to retailers, and the company accepted the offer, the defense of agency estoppel was not preserved, and because the evidence established that the company had paid rebates to at least 28 Arkansas retail establishments, it was not arbitrary or capricious for the Board to reject the "recommendation" and impose a \$28,000 fine, and suspension of the company's permit for six months. *H.T. Hackney Co. v. Davis*, 353 Ark. 797, 120 S.W.3d 79 (2003).

Proceedings.

Even though the director for the Arkan-

26-57-257. Director of Arkansas Tobacco Control Board.

(a)(1) The Governor shall employ a person to serve as Director of the Arkansas Tobacco Control Board.

(2) The Director of the Arkansas Tobacco Control Board shall serve at the pleasure of the Governor.

(b) The Director of the Arkansas Tobacco Control Board shall present all evidence tending to prove violations of law or regulations at hearings held by the Arkansas Tobacco Control Board.

(c) The Director of the Arkansas Tobacco Control Board may employ such other personnel as he or she deems necessary, subject to the approval of the board and as authorized by the General Assembly.

(d) Any personnel employed by the Director of the Arkansas Tobacco Control Board shall serve at his or her pleasure.

(e)(1) The Director of the Arkansas Tobacco Control Board and the board each may adopt, keep, and use a common seal.

(2) This seal shall be used for authentication of the records, process, and proceedings of the Director of the Arkansas Tobacco Control Board and the board, respectively.

(3) Judicial notice shall be taken of each use of this seal in all of the courts of the state.

(f) Any process, notice, or other paper which the Director of the Arkansas Tobacco Control Board may be authorized by law to issue shall be deemed sufficient if signed by the Director of the Arkansas Tobacco Control Board and authenticated by the seal of the Director of the Arkansas Tobacco Control Board.

(g) Any process, notice, or other paper which the board may be authorized by law to issue shall be deemed sufficient if signed by the chair of the Arkansas Tobacco Control Board and authenticated by the seal of the board.

(h) All acts, orders, proceedings, rules, regulations, entries, minutes, and other records of the Director of the Arkansas Tobacco Control Board and all reports and documents filed with the Director of the Arkansas Tobacco Control Board may be proved in any court of this state by a copy thereof certified to by the Director of the Arkansas Tobacco Control Board with the seal of the Director of the Arkansas Tobacco Control Board attached.

(i) All acts, orders, proceedings, rules, regulations, entries, minutes, and other records of the board and all reports and documents filed with the Director of the Arkansas Tobacco Control Board may be proved in any court of this state by a copy thereof certified to by the chair of the board with the seal of the board attached.

(j)(1) The Director of the Arkansas Tobacco Control Board shall maintain records of all permits and licenses issued, suspended, denied, or revoked by the board.

(2) The records shall be in such form as to provide ready information as to the identity of the licensees, including the names of major stockholders and directors of corporations holding licenses or permits and the location of the licensed or permitted premises.

(k) The Director of the Arkansas Tobacco Control Board shall recognize the Office of Alcohol and Drug Abuse Prevention as the agency responsible for ensuring full compliance with the Public Health Service Act, § 1926(b), 42 U.S.C. § 300x-26(b), and shall call upon administrative departments of the state, county, and city governments, sheriffs, city police departments, or other law enforcement officers for such information and assistance as the Director of the Arkansas Tobacco Control Board may deem necessary in the performance of the duties imposed upon him or her by this subchapter.

(l) The Director of the Arkansas Tobacco Control Board may inspect or cause to be inspected any premises where tobacco products are distributed, stored, or sold.

(m) In the conduct of any hearings, the Director of the Arkansas Tobacco Control Board may:

(1) Examine or cause to be examined any person under oath and examine or cause to be examined books and records of any licensee;

(2) Hear testimony and take proof material to his or her information and the discharge of his or her duties under this section;

(3) Administer oaths or cause oaths to be administered; and

(4)(A) Issue subpoenas to require the attendance of witnesses and the production of books and records.

(B) Any circuit court by written order may require the attendance of witnesses or the production of relevant books or other records subpoenaed by the Director of the Arkansas Tobacco Control Board, and the court may compel obedience to its order by proceedings for contempt.

(n) All hearings and appeals from any hearing shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(o) The Director of the Arkansas Tobacco Control Board shall exercise other powers, functions, and duties as are or may be imposed or conferred upon him or her by law or the board.

(p) The Director of the Arkansas Tobacco Control Board shall have other powers, functions, and duties pertaining to the issuance, suspension, and revocation of the permits and licenses enumerated in § 26-57-219 which previously were granted to the Director of the Department of Finance and Administration, except the authority to regulate manufacturers, and which are specifically delegated to the Department of Finance and Administration by this subchapter.

(q)(1)(A) The power and duty to collect taxes imposed on tobacco and tobacco products is specifically exempted from the powers and duties granted or assigned to the board or the department.

(B) However, a permit or license holder's failure to pay taxes or fees imposed on tobacco products or any permit or license fees imposed by this subchapter in a timely manner is grounds for the nonissuance, suspension, revocation, or nonrenewal of any permits or licenses issued by the board.

(C) Failure to timely and fully pay any other state and local taxes as reported by the Director of the Department of Finance and Administration shall also constitute grounds for the nonissuance, suspension, revocation, or nonrenewal of any permits or licenses issued by the board.

(2)(A) Each year the Director of the Department of Finance and Administration shall report to the board any and all permit and license holders who are more than ninety (90) days delinquent on any state and local taxes.

(B) The board shall not issue or renew any permit or license issued under this section for any permit or license holder more than ninety (90) days delinquent on any privilege fee or tax addressed in this section unless the permittee or licensee demonstrates that he or she is current under a valid repayment agreement for the delinquent tax.

(3)(A) Each year the board shall send notices to all permit and license holders more than ninety (90) days delinquent on any state and local taxes.

(B) This notice shall inform the permit or license holder that he or she is delinquent on payment of state and local taxes due the Director of the Department of Finance and Administration and that the permit or license holder will be unable to obtain or renew the permit or license that he or she holds until such time as the person becomes current in the payment of the tax due the Director of the Department of Finance and Administration, or until such time as the person enters into a valid repayment agreement with the department for the payment of the delinquent tax.

(r) The board may assess penalties for violation of § 5-27-227(a) according to the following schedule:

(1) If the alleged violator has received a notice of an alleged violation from the board or other agency or official with the authority to assess

penalties containing the information specified in this subchapter, a civil penalty not to exceed two hundred fifty dollars (\$250) for a first violation within a forty-eight-month period;

(2) A civil penalty not to exceed five hundred dollars (\$500) for a second violation within a forty-eight-month period and suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed two (2) days;

(3) A civil penalty not to exceed one thousand dollars (\$1,000) for a third violation within a forty-eight-month period and suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed seven (7) days;

(4) A civil penalty not to exceed two thousand dollars (\$2,000) for a fourth or subsequent violation within a forty-eight-month period and suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed fourteen (14) days; and

(5) For a fifth violation within a forty-eight-month period, the license or permit enumerated in § 26-57-219 may be revoked.

(s)(1) A notice of an alleged violation of § 5-27-227 shall be given to the holder of a retail permit or license within ten (10) days of the alleged violation.

(2) The notice must contain the date and time of the alleged violation.

(3)(A) It shall also include either the name of the person making such alleged sale or information reasonably necessary to determine the location in the store that allegedly made such sale.

(B) Such information should include when appropriate but not be limited to, the cash register number, physical location of the sale in the store, and, if possible, the lane or aisle number.

(t) Notwithstanding the provisions of subsection (r) of this section, the board shall consider the following factors when reviewing a possible violation:

(1) The business has adopted and enforced a written policy against selling cigarettes or tobacco products to persons less than eighteen (18) years of age;

(2) The business has informed its employees of the applicable laws regarding the sale of cigarettes and tobacco products to persons less than eighteen (18) years of age;

(3) The business required employees to verify the age of cigarette or tobacco product customers by way of photographic identification;

(4) The business has established and imposed disciplinary sanctions for noncompliance; and

(5) The appearance of the purchaser of the tobacco in any form or cigarette papers was such that an ordinary prudent person would believe him or her to be of legal age to make the purchase.

(u) Notwithstanding the provisions of subsection (r) of this section, no penalty for a violation of § 5-27-227 shall be imposed upon a retailer or agent or employee of such retailer who can establish an affirmative defense that prior to the date of the violation the retailer or agent or

employee of the retailer furnishing the tobacco in any form or cigarette papers reasonably relied upon proof of age which identified the person receiving the tobacco in any form or cigarette papers as being eighteen (18) years of age or older.

(v) "Proof of age" means any document issued by a governmental agency containing a description of the person, the person's photograph, or both, and giving the person's date of birth and includes, without being limited to, a passport, military identification card, or driver's license.

(w) Any cigarettes or tobacco products found in the possession of a person less than eighteen (18) years of age may be confiscated.

(x) An employee of a permit holder who violates § 5-27-227 shall be subject to a civil penalty not to exceed one hundred dollars (\$100) per violation.

(y)(1) In the case of a corporation or business with more than one (1) retail location, to determine the number of accumulated violations for purposes of the penalty schedule set forth in subsection (r) of this section, violations of § 5-27-227(a) by one (1) retail location shall not be accumulated against other retail locations of that same corporation or business.

(2) In the case of a retail location, for purposes of the penalty schedule set forth in subsection (r) of this section, violations accumulated and assessed against a prior owner of the retail location shall not be accumulated against a new owner of the same retail location.

(z) If a penalty has been assessed pursuant to this section against any person, business, or corporation for a single specific violation of § 5-27-227(a) or § 5-27-227(b), the person, business, or corporation shall not be prosecuted under § 5-27-227(a) or § 5-27-227(b) for a violation based on the same facts or specific incident for which the penalty was assessed under this section.

(aa) If any person, business, or corporation has been prosecuted for a single specific violation of § 5-27-227(a) or § 5-27-227(b), the person, business, or corporation shall not be assessed a civil penalty under this section based on the same facts or specific incident upon which the prosecution under § 5-27-227(a) or § 5-27-227(b) was based.

(bb) The enforcement of state laws relating to the prohibition of the barter or sale of tobacco in any form or cigarette papers to minors by multiple state agencies shall be coordinated to avoid duplicative inspections of the same retailer by multiple state agencies.

(cc) All penalties collected pursuant to the authority of this section shall be deposited into the State Treasury.

History. Acts 1997, No. 1337, § 23; 1999, No. 1591, § 2; 2001, No. 1368, § 5.

A.C.R.C. Notes. As enacted by Acts 2001, No. 1368, § 5, present subdivision (q)(2)(A) of this section began: "Beginning

April 1, 2002, and each year thereafter,".

As enacted by Acts 2001, No. 1368, § 5, present subdivision (q)(3)(A) of this section began: "Beginning May 15, 2002, and each year thereafter,".

CASE NOTES**Proceedings.**

Even though the director for the Arkansas Tobacco Control Board sent the tobacco company an offer of settlement “recommending” a \$500 fine for the tobacco company which gave unlawful rebates to retailers, and the company accepted the offer, the defense of agency estoppel was not preserved, and because the evidence

established that the company had paid rebates to at least 28 Arkansas retail establishments, it was not arbitrary or capricious for the Board to reject the “recommendation” and impose a \$28,000 fine, and suspension of the company’s permit for six months. *H.T. Hackney Co. v. Davis*, 353 Ark. 797, 120 S.W.3d 79 (2003).

26-57-258. Continuation of permits, licenses, regulations, etc., of Department of Finance and Administration.

All permits, licenses, certifications, determinations, regulations, and other actions of the Department of Finance and Administration under this subchapter in effect on June 30, 1997, shall continue in full force and effect until modified by the Arkansas Tobacco Control Board.

History. Acts 1997, No. 1337, § 23.

26-57-259. Nonpreemption.

(a) This act and the rules, regulations and other actions of the Arkansas Tobacco Control Board shall not be construed or interpreted so as to preempt or in any other manner qualify or limit the enactment and enforcement of any federal, state, county, municipal, or other local regulation of the manufacture, sale, storage, or distribution of tobacco products that is more restrictive than this act or the rules and regulations promulgated by the board.

(b) This act and the rules, regulations and other actions of the board shall not be construed or interpreted so as to preempt or otherwise limit any legal or equitable claims or causes of action brought under the common law or any federal or state statutes.

(c) Nothing in this act nor any rule or regulation of the board shall be construed or interpreted so as to require any state, county, municipal, or other local authority to exhaust any administrative remedies through the board including, but not limited to, the right to seize and forward to the board the state license of any vendor or retailer found to have illegally sold tobacco products to a person less than eighteen (18) years of age, provided that the vendor or retailer shall be given a hearing before the board within five (5) business days of the seizure.

History. Acts 1997, No. 1337, § 26.

A.C.R.C. Notes. References to “this chapter” in subchapters 1, 3, 4-6 and §§ 26-57-201 — 26-57-258 may not apply to this section, which was enacted subsequently.

Meaning of “this act”. Acts 1997, No.

1337, codified as §§ 5-27-227, 26-57-203, 26-57-206, 26-57-208, 26-57-210 — 26-57-216, 26-57-219, 26-57-221 — 26-57-224, 26-57-227, 26-57-229 — 26-57-238, 26-57-242, 26-57-247, 26-57-249 — 26-57-252, 26-57-255 — 26-57-259.

26-57-260. Definitions.

As used in this section and § 26-57-261:

(1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement;

(2)(A) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another person.

(B) Solely for the purposes of the definition of "affiliate", the term:

(i) "Owns", "is owned", and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more; and

(ii) "Person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons;

(3) "Allocable share" means the allocable share as that term is defined in the Master Settlement Agreement;

(4)(A) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(i) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(ii) Tobacco in any form that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette; or

(iii) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette described in subdivision (4)(A)(i) of this section.

(B) "Cigarette" includes "roll-your-own", that is, any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

(C) For purposes of this definition of "cigarette", nine hundredths (0.09) of an ounce of roll-your-own tobacco shall constitute one (1) individual cigarette;

(5) "Master Settlement Agreement" means the settlement agreement and related documents entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers;

(6) "Qualified escrow fund" means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars (\$1,000,000,000) when such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing

the use of the funds' principal except as consistent with § 26-57-261(a)(2)(B);

(7) "Released claims" means released claims as that term is defined in the Master Settlement Agreement;

(8) "Releasing parties" means releasing parties as that term is defined in the Master Settlement Agreement;

(9)(A) "Tobacco product manufacturer" means an entity that, after the date of enactment of this section and § 26-57-261, directly and not exclusively through any affiliate:

(i) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer, except where the importer is an original participating manufacturer, as that term is defined in the Master Settlement Agreement, who will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and who pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States;

(ii) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(iii) Becomes a successor of an entity described in subdivision (9)(A)(i) or (9)(A)(ii) of this section.

(B) "Tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer, unless such affiliate itself falls within any of subdivisions (9)(A)(i)-(9)(A)(iii) of this section; and

(10)(A) "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs or roll-your-own tobacco containers bearing the excise tax stamp of the state.

(B) The Department of Finance and Administration shall promulgate such regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

History. Acts 1999, No. 1165, § 1.

CASE NOTES

Cited: *Dos Santos v. Beebe*, 418 F. Supp. 2d 1064 (W.D. Ark. 2006).

26-57-261. Requirements.

(a) Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after the date of enactment of this section and § 26-47-260, shall do one (1) of the following:

(1) Become a participating manufacturer, as that term is defined in section II(jj) of the Master Settlement Agreement, and generally perform its financial obligations under the Master Settlement Agreement; or

(2)(A) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, as such amounts are adjusted for inflation:

(i) 1999: \$.0094241 per unit sold after the date of enactment of this section and § 26-57-260;

(ii) 2000: \$.0104712 per unit sold;

(iii) For each of 2001 and 2002: \$.0136125 per unit sold;

(iv) For each of 2003 through 2006: \$.0167539 per unit sold; and

(v) For each of 2007 and each year thereafter: \$.0188482 per unit sold.

(B) A tobacco product manufacturer that places funds into escrow pursuant to subdivision (a)(2)(A) of this section shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(i) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under subdivision (a)(2)(B)(i) of this section:

(a) In the order in which they were placed into escrow; and

(b) Only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined under section IX(i) of the Master Settlement Agreement including after final determination of all adjustments, that the manufacturer would have been required to make on account of the units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(iii) To the extent not released from escrow under subdivisions (a)(2)(B)(i) or (a)(2)(B)(ii) of this section, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five (25) years after the date on which they were placed into escrow.

(C) Each tobacco product manufacturer who elects to place funds into escrow pursuant to subdivision (a)(2) of this section shall annually certify to the Attorney General that the tobacco product

manufacturer is in compliance with subdivision (a)(2) of this section. The Attorney General may bring a civil action on behalf of the state against any tobacco product manufacturer who fails to place into escrow the funds required under this section. Any tobacco product manufacturer who fails in any year to place into escrow the funds required under this section shall:

(i) Be required within fifteen (15) days to place such funds into escrow as shall bring him or her into compliance with this section. The court, upon a finding of a violation of subdivision (a)(2) of this section, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow;

(ii) In the case of a knowing violation, be required within fifteen (15) days to place such funds into escrow as shall bring him or her into compliance with this section. The court, upon a finding of a knowing violation of subdivision (a)(2) of this section, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from escrow; and

(iii) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary for a period not to exceed two (2) years.

(b) Each failure to make an annual deposit required under this section shall constitute a separate violation.

History. Acts 1999, No. 1165, § 2; 2005, No. 384, § 1.

A.C.R.C. Notes. Acts 2005, No. 384, § 3, provided: "Severability. (a) If this act or any portion of the amendment to Arkansas Code § 26-57-261(2)(B)(ii) made by this act is held by a court of competent jurisdiction to be unconstitutional, then Arkansas Code § 26-57-261(2)(B)(ii) shall be deemed to be repealed in its entirety.

"(b) If Arkansas Code § 26-57-261(2)(B) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then this act shall be deemed repealed and Arkansas Code § 26-57-261(2)(B)(ii) be restored as if the amendment made by this act had not been made.

"(c) Neither any holding of unconstitutionality nor the repeal of Arkansas Code § 26-57-261(2)(B)(ii) shall affect, impair, or invalidate any other portion of Arkan-

sas Code § 26-57-261 or the application of Arkansas Code § 26-57-261 to any other person or circumstance, and the remaining portions of Arkansas Code § 26-57-261 shall continue in full force and effect."

Amendments. The 2005 amendment, in (2)(B)(ii), inserted "on account of units sold in the state" and substituted "the Master Settlement Agreement payments ... units sold" for "on account of the units sold" for "in a particular year was greater than the state's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement, as determined pursuant to section IX(i)(2) of the Master Settlement Agreement and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment" in (2)(B)(ii).

Effective Dates. Acts 2005, No. 384,

§ 4, provided: "Effective date. Section 1 shall apply to all funds placed into, due to be placed into, or being held in a qualified

escrow account pursuant to Arkansas Code § 26-57-261 on or after March 31, 2005."

CASE NOTES

ANALYSIS

Constitutionality.
Federal Preemption.

Constitutionality.

Where an amendment to this section implementing a settlement between states and tobacco companies required a non-participating manufacturer to pay amounts in escrow pending any finding of future liability, the post-deprivation remedy of either returning the escrowed funds at the end of 25 years or litigation if the right to return was disputed was constitutionally sufficient. *Dos Santos v. Beebe*, 418 F. Supp. 2d 1064 (W.D. Ark. 2006).

Where a tobacco products manufacturer which did not participate in a settlement between states and tobacco companies alleged that an amendment to this section, which provided that the nonparticipating manufacturer paid more into escrow and retroactively eliminated refunds of the manufacturer's prior escrow overpayments, impermissibly burdened the manufacturer's free speech rights through economic pressure to participate in the settlement, no unconstitutional burden was shown since the manufacturer did not pay more than participating companies and merely lost its prior competitive advantage. *Dos Santos v. Beebe*, 418 F. Supp. 2d 1064 (W.D. Ark. 2006).

Where a tobacco products manufacturer which did not participate in a settlement between states and tobacco companies alleged that an amendment to this section implementing the settlement had the effect of causing or allowing participating companies to conduct their business as though they were part of an output cartel, to the extent that the amendment might foster monopolistic conduct, the amendment did not violate Ark Const. Art. 2, § 19, since the regulatory scheme of which the amendment formed a part was created to serve the public interest in combating the serious health effects of smoking. *Dos Santos v. Beebe*, 418 F. Supp. 2d 1064 (W.D. Ark. 2006).

Tobacco product distributors' equal protection claims were dismissed where distributors were not required to pay more for their Arkansas sales than would a participating manufacturer. *Grand River Enters. Six Nations, Ltd. v. Beebe*, 418 F. Supp. 2d 1082 (W.D. Ark. 2006).

Tobacco product distributors' substantive due process claims relating to the prospective application of this section were dismissed where there was a rational relationship between the allocable share amendment and the states expressed purpose of ensuring effective administration of a master settlement agreement, which was a critical component in reducing the rate of smoking in Arkansas. *Grand River Enters. Six Nations, Ltd. v. Beebe*, 418 F. Supp. 2d 1082 (W.D. Ark. 2006).

This section and § 26-57-1303 did not violate a tobacco importer's First Amendment rights where its only complaint, a loss of competitive advantage, did not unconstitutionally burden speech, whether considered personal or commercial. *Int'l Tobacco Ptnrs., LTD v. Beebe*, 420 F. Supp. 2d 989 (W.D. Ark. 2006).

Tobacco importer's claim that prospective application of this section violated procedural due process was dismissed where the post-deprivation remedy, either return of the funds at the end of 25 years or litigation if the right to return was disputed, was constitutionally sufficient. *Int'l Tobacco Ptnrs., LTD v. Beebe*, 420 F. Supp. 2d 989 (W.D. Ark. 2006).

Tobacco importer's claim that retroactive application of this section violated substantive due process survived a motion to dismiss where the importer had a protected property interest and it had alleged a substantial financial impact on its business. *Int'l Tobacco Ptnrs., LTD v. Beebe*, 420 F. Supp. 2d 989 (W.D. Ark. 2006).

Federal Preemption.

Tobacco importer's claim that the allocable share amendment set forth in this section and § 26-57-1303(c) violated 15 U.S.C.S. § 1 was dismissed where the amendment did not mandate price-setting

or output price fixing by private parties and, as a result, the state statutes were not preempted by the Sherman Act. Int'l Tobacco Ptnrs., LTD v. Beebe, 420 F. Supp. 2d 989 (W.D. Ark. 2006).

26-57-262. Sale of export cigarettes.

(a) FINDINGS AND PURPOSE.

(1) Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The Surgeon General has determined that smoking causes lung cancer, heart disease, and other serious diseases and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) It is the policy of the state that consumers be adequately informed about the adverse health effects of cigarette smoking by including warning notices on each package of cigarettes.

(3) It is the intent of the General Assembly to align state law with federal laws, regulations, and policies relating to the manufacture, importation, and marketing of cigarettes, and in particular, the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331 et seq., and 26 U.S.C. § 5754.

(4) The General Assembly finds that consumers and retailers purchasing cigarettes are entitled to be fully informed about any adverse health effects of cigarette smoking by the inclusion of warning notices on each package of cigarettes and to be assured through appropriate enforcement measures that cigarettes they purchase were manufactured for consumption within the United States.

(b) DEFINITIONS.

As used in this section:

(1)(A) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(i) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(ii) Tobacco, in any form, that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to or purchased by consumers as a cigarette; or

(iii) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to or purchased by consumers as a cigarette described in subdivision (b)(1)(A)(i) of this section.

(B) "Cigarette" includes "roll your own", which is any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

(C) For purposes of this definition of "cigarette", nine one-hundredths (0.09) of an ounce of "roll your own" tobacco shall constitute one (1) individual "cigarette"; and

(2) "Package" means a pack, carton, or container of any kind in which cigarettes are offered for sale, sold, or otherwise distributed or intended for distribution to consumers.

(c) TAX STAMPS.

(1) No tax stamp may be affixed to or made upon any package of cigarettes if:

(A) The package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331 et seq., for the placement of labels, warnings, or any other information upon a package of cigarettes that is manufactured, packaged, or imported for sale, distribution, or use within the United States;

(B) The package is labeled "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording indicating that the manufacturer did not intend that the product be sold in the United States;

(C) The cigarettes in the package do not comply with any other applicable requirements imposed pursuant to federal law and federal implementing regulations;

(D) The package in any way violates federal trademark or copyright laws;

(E) The package or a package containing individually stamped packages has been altered by adding or deleting the wording, labels, or warnings described in this subdivision (c)(1); or

(F) With respect to the cigarettes, any person is not in compliance with 15 U.S.C. § 1335a relating to submission of ingredient information to federal authorities, 19 U.S.C. §§ 1681-1681b relating to imports of certain cigarettes, 26 U.S.C. § 5754, relating to previously exported tobacco products, or any other federal law or implementing federal regulations.

(2) Any person who sells or holds for sale cigarette packages to which is affixed a tax stamp in violation of this section shall be subject to the penalties prescribed in subdivision (c)(5) of this section.

(3) The Arkansas Tobacco Control Board shall revoke a wholesale or retail license of any person who sells or holds for sale cigarette packages to which is affixed a tax stamp in violation of this section.

(4) The Department of Finance and Administration or the board may seize and destroy or sell to the manufacturer only for export packages that do not comply with this section.

(5) A violation of this section is a deceptive act or practice and shall constitute a Class A misdemeanor.

(6) On or before the fifteenth business day of each month, each person licensed to affix the state tax stamp to cigarettes shall file with the Director of the Department of Finance and Administration for all cigarettes imported into the United States to which the person has affixed the tax stamp in the preceding month copies of the customs

certificates with respect to the cigarettes required to be submitted by 19 U.S.C. § 1681a(c).

(7) Any person who sells, distributes, or manufactures cigarettes and sustains direct economic or commercial injury as a result of a violation of this section may bring an action in good faith for appropriate injunctive relief.

History. Acts 1999, No. 1285, §§ 1-3; 2001, No. 1545, §§ 1, 2.

SUBCHAPTER 3 — SLOT AND VENDING MACHINES GENERALLY

SECTION.

26-57-301 — 26-57-314. [Repealed.]

26-57-301 — 26-57-314. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1993, No. 344, § 2. The subchapter was derived from the following sources:

26-57-301. Acts 1933, No. 137, § 2; Pope's Dig., § 13421; A.S.A. 1947, § 84-2602.

26-57-302. Acts 1933, No. 137, § 2; Pope's Dig., § 13421; Acts 1947, No. 344, § 4; A.S.A. 1947, §§ 84-2602, 84-2608.

26-57-303. Acts 1931, No. 167, § 1; Pope's Dig., § 13418; A.S.A. 1947, § 84-2601.

26-57-304. Acts 1931, No. 167, § 1; Pope's Dig., § 13418; A.S.A. 1947, § 84-2601.

26-57-305. Acts 1931, No. 167, § 3; Pope's Dig., § 13419; A.S.A. 1947, § 84-2603.

26-57-306. Acts 1931, No. 167, § 2; 1933, No. 137, § 1; Pope's Dig., § 13420; Acts 1939, No. 201, § 6; A.S.A. 1947, § 84-2604.

26-57-307. Acts 1947, No. 344, § 1; 1979, No. 911, §§ 13, 16; 1983, No. 707, § 1; A.S.A. 1947, §§ 84-2605, 84-2605n.

26-57-308. Acts 1947, No. 344, § 2; 1949, No. 252, § 1; A.S.A. 1947, § 84-2606.

26-57-309. Acts 1947, No. 344, § 4; A.S.A. 1947, § 84-2608.

26-57-310. Acts 1947, No. 344, § 3; A.S.A. 1947, § 84-2607.

26-57-311. Acts 1931, No. 167, § 4; 1933, No. 137, § 4; Pope's Dig., § 13423; A.S.A. 1947, § 84-2618.

26-57-312. Acts 1933, No. 137, § 5; Pope's Dig., § 13424; A.S.A. 1947, § 84-2619.

26-57-313. Acts 1931, No. 167, § 5; 1933, No. 137, § 6; Pope's Dig., § 13425; Acts 1947, No. 344, § 6; A.S.A. 1947, §§ 84-2610, 84-2620.

26-57-314. Acts 1983, No. 713, §§ 1-3; A.S.A. 1947, §§ 84-2650 — 84-2652.

SUBCHAPTER 4 — COIN-OPERATED AMUSEMENTS

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Cross References. Municipal taxes, § 26-77-301 et seq.

Effective Dates. Acts 1939, No. 201, § 12: approved Mar. 9, 1939. Emergency clause provided: "Whereas, there is no adequate law in this State defining and regulating amusement games and whereas without such law the State is being deprived of revenue upon such business through the unregulated conduct thereof, and whereas the passage of such law is necessary for the immediate preservation of the public peace, health and safety of the inhabitants of this State, an emergency exists and this Act shall take effect and be in force from and after its passage."

Acts 1941, No. 319, § 19: approved Mar. 26, 1941. Emergency clause provided: "It is hereby determined that the education interest of the children of the State can be best served by improving the salaries and qualifications of teachers; and it is found that this act is necessary for the preservation of the peace, health, and safety of the people, an emergency is hereby declared to exist, and this act shall take effect and be in full force from, and after, its passage."

Acts 1949, No. 76, § 4: approved Feb. 11, 1949. Emergency clause provided: "Whereas, there is no adequate law in this State defining and regulating coin operated automatic amusement machines and whereas without such law the State is being deprived of revenue upon such business through the unregulated conduct thereof, and whereas, the passage of such law is necessary for the immediate preservation of the public peace, health and

safety of the inhabitants of this State, an emergency exists and this Act shall take effect and be in force from and after its passage."

Acts 1981, No. 868, § 5: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the law relating to licensing of persons owning, operating and leasing coin operated amusement devices contains certain residency restrictions regarding the issuance of such licenses; that such law is inappropriate as applied to persons seeking licenses to operate coin operated amusement games at carnivals and county, district and state fairs; that this Act is designed to amend such law to provide for the licensing of such persons and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 397, § 3: Mar. 18, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Supreme Court recently held certain provisions of the Slot and Vending Machine Act (Ark. Stat. Ann. § 84-2601 et seq. [Repealed].) relating to the residency of applicants for permits and licenses pursuant to that Act, to be unconstitutional as a violation of the equal protection and privileges and immunities clauses of the United States Constitution, since there was no valid relationship between the residency requirement and any legitimate State governmental

interests; that this Act is designed to clarify the intent and purpose of the residency requirement for the business of owning, operating or leasing of such coin-operated amusement devices, by recognizing the fact that the operation of coin-operated music and amusement machines are frequently used in places of amusement, dancehalls, roadhouses, and places where alcoholic beverages are sold and consumed; that many of our citizens are attracted to such places because of the presence of such devices, and as a result could be exposed to alcohol, controlled substances and unwholesome conditions detrimental to the health, safety and well-being of our citizens; that the purpose of this Act is to clarify this State's interest in regulating closely the licensing of such persons who own or operate such amusement and music devices, and that the residency requirements of this Act are designed to assist in such regulation and

control by this State, and this Act should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, safety and welfare, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

CASE NOTES

Municipal Regulation.

A city ordinance declaring that pinball machines or other gaming devices are a public nuisance and that it is unlawful for any business establishment or individual

to possess pinball machines in any manner within the city is void because of conflict with state statutes. *Piggott v. Eblen*, 236 Ark. 390, 366 S.W.2d 192 (1963).

26-57-401. Purposes.

The purposes of this section and §§ 26-57-306 [repealed] and 26-57-402 — 26-57-407 are to permit, license, and regulate the operation of coin-operated amusement games and to fix a penalty for the violation of this section and §§ 26-57-306 [repealed] and 26-57-402 — 26-57-407.

History. Acts 1939, No. 201, § 1; A.S.A. 1947, § 84-2611n.

Publisher's Notes. Section 26-57-306

referred to in this section was repealed by Acts 1993, No. 344, § 2.

CASE NOTES

Gambling.

There is a narrow exception to the rule that chancery courts will refrain from interfering with prosecutorial functions, but that exception is limited to the chancery court's protection of property rights in the form of lawful businesses; it does not apply to forms of illegal gambling.

Dickey v. Signal Peak Enters., 340 Ark. 276, 9 S.W.3d 517 (2000).

Where defendant was charged with possession of gambling devices and a jury found him not guilty by mistake of law due to his reliance upon inapplicable law in operating his arcade business, defendant's assertion of the defense was an

admission that he had engaged in illegal conduct and, because the jury found defendant's machines were illegal, the trial

court did not err in ordering the machines forfeited and destroyed. *Mullins v. State*, 359 Ark. 414, 198 S.W.3d 504 (2004).

26-57-402. Definitions.

As used in this subchapter:

(1) "Amusement device" means any coin-operated machine, device, or apparatus which provides amusement, diversion, or entertainment and includes, but is not limited to, such games as:

- (A) Radio rifles;
- (B) Miniature football;
- (C) Golf;
- (D) Baseball;
- (E) Hockey;
- (F) Bumper pool;
- (G) Tennis;
- (H) Shooting galleries;
- (I) Pool tables;
- (J) Bowling;
- (K) Shuffleboard;
- (L) Pinball tables;
- (M) Marble tables;
- (N) Music vending phonographs;
- (O) Jukeboxes;
- (P) Cranes;
- (Q) Video games;
- (R) Claw machines;
- (S) Bowling machines;
- (T) Countertop machines;
- (U) Novelty arcade machines;
- (V) Other similar musical devices for entertainment; and

(W) Other miniature games, whether or not such games show a score, which are not otherwise excluded in this subchapter;

(2)(A) "Any money or property", "other articles", "other valuable things", or "any representative of anything that is esteemed of value", as used in the antigambling statutes, § 5-66-101 et seq., shall not be expanded to include:

(i) A free amusement feature such as the privilege of playing additional free games if a certain score is made on a pinball table or on any other amusement device described in this section; or

(ii) Toys, novelties, or representations of value redeemable for those items which are won by the player of a bona fide amusement device which rewards players exclusively with merchandise limited to toys, novelties, or representations of value redeemable for those items, which have a wholesale value of not more than ten (10) times the cost charged to play the amusement device one (1) time or five dollars (\$5.00), whichever is less.

(B)(i) In the event of the accumulation of redeemable representations of value by any player, no toy or novelty having a wholesale

value of more than twelve dollars and fifty cents (\$12.50) may be given or awarded by any amusement device operator or redeemed by any player.

(ii) The toys and novelties shall be displayed in a single area on each premises.

(iii) Furthermore, each operator shall maintain records validating the wholesale value of the toys and novelties.

(iv) The toys and novelties shall be located solely on the premises where the amusement device is placed;

(3) "Coin-operated" means any machine, device, or apparatus which is operated by placing through a slot or any kind of opening or container any coin, slug, token, or other object or article necessary to be inserted before the machine operates or functions but does not include any machine or device which is classified by the United States Government as requiring a federal gaming stamp under applicable provisions of the Internal Revenue Code;

(4) "Novelty" means an article of trade whose value is chiefly decorative, comic, or the like, and whose appeal is often transitory;

(5) "Person" means any individual, firm, association, company, partnership, limited liability company, corporation, joint-stock company, club, agency, syndicate, the State of Arkansas, county, municipal corporation or other political subdivision of this state, receiver, trustee, fiduciary, or trade association; and

(6) "Toy" means a small article of little value but prized as a souvenir or for some other special reason, a trinket, a knickknack, or a bauble.

History. Acts 1939, No. 201, § 2; 1949, No. 76, § 1; 1977, No. 553, § 1; A.S.A. 1947, §§ 84-2611, 84-2633; Acts 1995, No. 740, § 1; 1995, No. 1160, § 31; 1999, No. 1231, § 1.

Publisher's Notes. Acts 1995, No. 740

became law without the Governor's signature.

Effective Dates. Acts 1995, No. 740 became effective July 28, 1995.

Acts 1995, No. 1160 became effective Apr. 11, 1995.

CASE NOTES

ANALYSIS

Amusement Devices.
Any Money or Property.
Gambling Device.

Amusement Devices.

Three countertop machines were not gaming devices per se where no tokens, money, or prizes were offered in connection with the machines, and the countertop machines were specifically listed as amusement devices under subdivision (1) of this section; the machines were more akin to video arcade machines intended for amusement because a player inserted money and could play gambling-like games, but never received anything in

return except amusement. *State v. 26 Gaming Machs.*, 356 Ark. 47, 145 S.W.3d 368 (2004).

Any Money or Property.

When a pinball machine that gives free games, permissible under this section, is set up and the free games won on the machine are converted to cash by the proprietor's paying off these games in money, the machine clearly becomes a gaming device. *Bostic v. City of Little Rock*, 241 Ark. 671, 409 S.W.2d 825 (1966).

Gambling Device.

Just as devices described as slot machines in another case were determined to

be illegal gaming devices, defendant's devices were gambling devices proscribed by § 5-66-104; because they were slot machines, they were expressly excluded by § 26-57-403(a) from the definition of

amusement devices found at subdivision (1) of this section. *Paris v. State*, 87 Ark. App. 344, 192 S.W.3d 277 (2004).

Cited: *Mullins v. State*, 359 Ark. 414, 198 S.W.3d 504 (2004).

26-57-403. Automatic money payoff mechanisms not legalized.

(a) Nothing contained in this section and §§ 26-57-401, 26-57-402, and 26-57-404 — 26-57-407 shall be deemed to legalize, authorize, license, or permit any machine commonly known as a slot machine, roscoe, or jackpot, or any machine equipped with any automatic money payoff mechanism.

(b) Any person owning or possessing an amusement device described in § 26-57-402 or any person employed by or acting on behalf of the person, who gives to any other person money for a noncash prize, toy, or novelty received as a reward in playing the amusement device or for free games won on the amusement device shall be guilty of a Class A misdemeanor.

History. Acts 1939, No. 201, § 3; 1949, No. 76, § 2; A.S.A. 1947, § 84-2612; Acts 1995, No. 740, § 2; 2005, No. 1994, § 209.

Publisher's Notes. Acts 1995, No. 740 became law without the Governor's signature.

Amendments. The 2005 amendment deleted "26-57-306 [repealed]" preceding "26-57-401" in (a); and inserted "Class A" in (b).

CASE NOTES

ANALYSIS

Amusement Devices.
Gambling Device.

Amusement Devices.

Three countertop machines were not gaming devices per se where no tokens, money, or prizes were offered in connection with the machines, and the countertop machines were specifically listed as amusement devices under § 26-57-402(1); the machines were more akin to video arcade machines intended for amusement because a player inserted money and could play gambling-like games, but never

received anything in return except amusement. *State v. 26 Gaming Machs.*, 356 Ark. 47, 145 S.W.3d 368 (2004).

Gambling Device.

Just as devices described as slot machines in another case were determined to be illegal gaming devices, defendant's devices were gambling devices proscribed by § 5-66-104; because they were slot machines, they were expressly excluded by subsection (a) of this section from the definition of amusement devices found at § 26-57-402(1). *Paris v. State*, 87 Ark. App. 344, 192 S.W.3d 277 (2004).

Cited: *Piggott v. Eblen*, 236 Ark. 390, 366 S.W.2d 192 (1963).

26-57-404. Privilege tax on amusement devices.

(a) On each amusement device there shall be imposed an annual privilege tax of five dollars (\$5.00).

(b) The Director of the Department of Finance and Administration shall collect for each amusement device the full annual license fee when paid during the first six (6) months of the fiscal year, but any license fee

paid during the last six (6) months of the fiscal year shall be upon the basis of one-half (½) of the annual tax.

History. Acts 1939, No. 201, § 4; A.S.A. 1947, § 84-2613; Acts 1999, No. 1231, § 2.

CASE NOTES

ANALYSIS

In General.
Sales Tax Deductions.

In General.

Acts 1931, No. 167, imposing a higher tax on coin-operated miniature pool tables than Acts 1931, No. 156 imposed on standard pool tables, was not discriminatory. *Thompson v. Wiseman*, 189 Ark. 852, 75 S.W.2d 393 (1934) (decision under prior law).

Sales Tax Deductions.

Tax assessed by this section has been held not a tax that could be deducted from the sales tax under provision exempting a portion of all retail sales or articles on which a state privilege tax or license was already collected. *Bangs v. McCarroll*, 202 Ark. 103, 149 S.W.2d 53 (1941).

Cited: *Piggott v. Eblen*, 236 Ark. 390, 366 S.W.2d 192 (1963).

26-57-405. License tag for machines.

(a) Upon payment of the tax provided for in § 26-57-404, the Director of the Department of Finance and Administration will issue a license tag.

(b) The license tag shall:

(1) State the period of time the amusement device may be operated; and

(2) Be attached to the amusement device before placing it in operation.

History. Acts 1939, No. 201, § 4; A.S.A. 1947, § 84-2613.

CASE NOTES

Cited: *Piggott v. Eblen*, 236 Ark. 390, 366 S.W.2d 192 (1963).

26-57-406. Unlicensed games a public nuisance — Seizure and sale — Redemption.

Every amusement device as defined in § 26-57-402 upon which the individual privilege tax of five dollars (\$5.00) has not been paid is declared to be a public nuisance and may be seized by any authorized agent of the Department of Finance and Administration and sold by the Director of the Department of Finance and Administration on an order of the Pulaski County Circuit Court. However, the owner of the amusement device shall have the privilege of redeeming the amusement device within ten (10) days by paying the tax due and costs.

History. Acts 1939, No. 201, § 5; A.S.A. 1947, § 84-2614.

CASE NOTES

Cited: Piggott v. Eblen, 236 Ark. 390, 366 S.W.2d 192 (1963).

26-57-407. Disposition of revenue collected.

(a) All revenue collected under this section and §§ 26-57-306 [repealed] and 26-57-401 — 26-57-407 shall be deposited into the State Treasury.

(b) The first thirty thousand dollars (\$30,000) annually shall be placed to the credit of the Public School Fund and all over said thirty thousand dollars (\$30,000) annually shall be placed to the credit of the State Board of Health for rural health work.

History. Acts 1939, No. 201, § 8; 1941, No. 319, § 8; A.S.A. 1947, § 84-2616.

Section 26-57-306 referred to in this section was repealed by Acts 1993, No. 344, § 2.

Publisher's Notes. The School Equalizing Fund referred to in this section has been superseded by the Public School Fund. See § 19-5-305.

CASE NOTES

Cited: Piggott v. Eblen, 236 Ark. 390, 366 S.W.2d 192 (1963).

26-57-408. Owning, operating, or leasing a privilege — Privilege fee imposed.

(a) The business of owning, operating, or leasing coin-operated amusement devices, including, but not limited to, the coin-operated amusement devices defined in § 26-57-402, is declared to be a privilege.

(b) It is further declared that the owners, operators, and lessors of such machines shall pay a fee for this privilege in addition to the privilege tax required by law to be paid on amusement devices.

History. Acts 1977, No. 553, § 1; A.S.A. 1947, § 84-2633.

CASE NOTES

Cited: Ragland v. Forsythe, 282 Ark. 43, 666 S.W.2d 680 (1984).

26-57-409. Annual license fee — Renewals.

(a) The annual fee for the license provided for in § 26-57-412 shall:

(1) For all licensees operating not more than three (3) amusement devices, be the sum of five hundred dollars (\$500); and

(2) For all licensees operating more than three (3) amusement devices, be the sum of one thousand dollars (\$1,000).

(b) However, those who restrict the placement of coin-operated amusement devices exclusively to carnivals and county, district, and state fairs shall pay a monthly license fee as follows:

(1) Licensees operating not more than three (3) amusement devices, the sum of seventy-five dollars (\$75.00) a month; and

(2) Licensees operating more than three (3) amusement devices, the sum of one hundred fifty dollars (\$150) a month.

(c) Any licensee who operates amusement devices for more than three (3) months in any one (1) calendar year is required to pay the annual fee for a license.

(d) However, the residency requirements in § 26-57-410 do not apply to those applicants whose placement of coin-operated amusement devices is limited exclusively to carnivals and county, district, and state fairs. Such license is valid for a maximum of three (3) months and may not be renewed, extended, or reissued. No more than one (1) license may be issued in one (1) calendar year.

(e)(1) Annual fees shall be paid on a fiscal-year basis beginning July 1 of each year. Licenses issued subsequent to July 1 shall be paid for as though they were for a full year.

(2) However, licensees who restrict the operation of amusement devices to carnivals and county, district, and state fairs shall pay their license fee at least thirty (30) days prior to the opening of any carnival or county, district, or state fair in which they will be operating amusement devices.

History. Acts 1977, No. 553, §§ 2, 4, 9; A.S.A. 1947, §§ 84-2634, 84-2636, 1981, No. 868, §§ 1-3; 1985, No. 397, § 1; 84-2641.

26-57-410. Licenses — Eligibility.

(a) No license as required in § 26-57-412 shall be issued unless:

(1) The applicant is twenty-one (21) years of age or more;

(2) The applicant is a resident of the State of Arkansas and has been such continuously for at least one (1) year prior to the date of his or her application; and

(3) At least one-half ($\frac{1}{2}$) of any partnership or corporation applicant is owned by a resident of Arkansas who has been such continuously for at least one (1) year prior to the application and which resident shall be the party accountable for the collection and reporting of all state taxes and compliance with this subchapter.

(b) No license as provided for in § 26-57-412 shall be issued to:

(1) Any convicted felon;

(2) Any person of known criminal tendencies; or

(3) A former licensee whose license has been revoked until two (2) years subsequent to the date of such revocation.

History. Acts 1977, No. 553, §§ 2, 5; 1981, No. 868, § 1; 1985, No. 397, § 1; A.S.A. 1947, §§ 84-2634, 84-2637.

CASE NOTES

Constitutionality.

Subdivisions (a)(2) and (a)(3) of this section were held unconstitutional as to the residency requirement contained therein as violating the equal protection

and privileges and immunities clauses of the United States Constitution. *Ragland v. Forsythe*, 282 Ark. 43, 666 S.W.2d 680 (1984) (decision prior to 1985 amendment).

26-57-411. Licenses — Surety bond required.

(a) Prior to the issuance or renewal of any license under this subchapter, the Director of the Department of Finance and Administration shall require the applicant to procure a suitable surety bond in the principal sum of six thousand dollars (\$6,000) to insure the faithful and prompt payment of all sales taxes, use taxes, or privilege taxes which may become due in connection with the operation of the licensed business and to secure the faithful performance of all duties and obligations imposed by this subchapter.

(b) No surety bond is required prior to the issuance of a license under this subchapter to an applicant who restricts the placement of amusement devices to carnivals and county, district, and state fairs for a period not exceeding three (3) months in any one (1) calendar year.

History. Acts 1977, No. 553, § 11; 1981, No. 868, § 4; A.S.A. 1947, § 84-2643; Acts 2007, No. 450, § 1.

Amendments. The 2007 amendment added the (a) and (b) designations; and in (b), substituted “No surety bond is re-

quired prior to the issuance of a license under this subchapter to an applicant who” for “However, if the licensee” and deleted “the required surety bond will be in the amount of two thousand five hundred dollars (\$2,500)” following “year.”

26-57-412. Licenses — Issuance.

(a) Licenses for the privilege of owning, operating, or leasing coin-operated amusement devices shall be issued by the Director of the Department of Finance and Administration.

(b) Applications for the licenses shall be on a form prescribed by the director.

(c) At the time of the issuance of such licenses, each licensee shall be assigned a number.

History. Acts 1977, No. 553, § 3; A.S.A. 1947, § 84-2635.

26-57-413. Licenses — Revocation or suspension.

(a) The Director of the Department of Finance and Administration may revoke or suspend the license authorized under this subchapter for cause.

(b) Any person, partnership, limited liability company, or corporation that is a licensee under this subchapter shall be notified in writing that the revocation or suspension of its license is being considered and the reason therefor.

(c) The licensee shall have fifteen (15) days in which to notify the director that a hearing is desired, after which time a hearing shall be had not less than fifteen (15) days subsequent to the expiration of the fifteen-day period of notice.

(d)(1) Any licensee whose license has been revoked or suspended may appeal to the Pulaski County Circuit Court within twenty (20) days after revocation or suspension by filing a copy of the notice of the revocation or suspension with the clerk of the circuit court and causing a summons to be served on the director.

(2) The case shall be tried de novo in the circuit court.

(3) Either party may prosecute an appeal to the Supreme Court as in other cases.

History. Acts 1977, No. 553, § 3; A.S.A. 1947, § 84-2635; Acts 1995, No. 1160, § 32.

26-57-414. Owning, operating, or leasing without license a public nuisance — Seizure and sale of devices — Redemption — Subsequent license fee credit.

(a) Any person who engages in the business of owning, operating, or leasing coin-operated amusement devices without first obtaining the license prescribed in § 26-57-412 is declared to be maintaining a public nuisance.

(b)(1) Any amusement device so operated shall be seized by an authorized agent of the Revenue Division of the Department of Finance and Administration and sold by the Director of the Department of Finance and Administration at public auction on an order of the Pulaski County Circuit Court.

(2) However, such amusement devices may be redeemed prior to sale by their owner upon the payment of any sales or use tax due on such amusement devices, the sales tax on the receipt of such wrongfully operated machine, all costs and expenses incurred in connection with the seizure and obtaining the order of court, and a penalty of one thousand dollars (\$1,000).

(c) If the offender applies for a license as provided in this subchapter within thirty (30) days subsequent to the payment of the penalty, five hundred dollars (\$500) of such penalty shall be allowed as the first annual license fee in the event the license is granted.

History. Acts 1977, No. 553, § 8; A.S.A. 1947, § 84-2640.

26-57-415. Notification of purchase or lease of device.

(a) All licensees under this subchapter within ten (10) days of the date of purchase or lease of any amusement device upon which an annual privilege tax is levied by the state shall furnish the Director of the Department of Finance and Administration with a copy of the invoice or lease agreement, showing the description and serial number of the amusement device and evidence that the Arkansas sales tax has been paid.

(b) In the event that the amusement device was purchased or leased from outside the state, the invoice or lease agreement shall be accompanied by the appropriate form and a check or money order for the state compensating tax.

History. Acts 1977, No. 553, § 6; A.S.A. 1947, § 84-2638.

26-57-416. Lessor's records — Sales taxes.

(a) In all cases in which a licensee under this subchapter leases amusement devices to others, it shall be the duty of the licensee to keep records of the amount of rent received by the licensee and the amount retained by the lessee and to furnish carbon copies of such records to the lessee.

(b)(1) It is the duty and obligation of the licensee to ascertain the amount of sales tax due on the receipts of the machine and to withhold the amount of such tax from such receipts and to remit the tax due to the Revenue Division of the Department of Finance and Administration.

(2) The amount of sales tax shall not be taken into consideration in determining the rent due the licensee.

(c) All records required to be kept by the licensee under the provision of this subchapter shall be made available to the Director of the Department of Finance and Administration within a reasonable time after request or the license of the offending licensee may be revoked as provided in this subchapter.

History. Acts 1977, No. 553, § 7; A.S.A. 1947, § 84-2639.

26-57-417. Decal or card with licensee's number.

(a) In addition to the tax stamp which must be displayed on each amusement device as required under other statutes, each licensee under this subchapter shall procure and exhibit on each amusement device owned or operated under such license a decal or card showing the number of the license under which the amusement device is operated.

(b)(1) Any coin-operated amusement device exhibited without the decal or card showing the number of the license as required in subsection (a) of this section is declared to be the maintenance of a

public nuisance, and such an amusement device may be seized as provided in § 26-57-414.

(2) However, if the owner of the machine is a licensed operator under this subchapter, the owner may redeem the machine upon the payment of a ten-dollar penalty.

History. Acts 1977, No. 553, § 10;
A.S.A. 1947, § 84-2642.

26-57-418. Sale of coin-operated amusement devices declared privilege — Fee imposed on salespersons.

The selling, offering for sale, the taking of orders, or the soliciting for sale of coin-operated amusement devices, as defined in § 26-57-402, is declared to be a privilege. It is further declared that salespersons shall pay a fee for this privilege.

History. Acts 1977, No. 553, § 12;
A.S.A. 1947, § 84-2644.

26-57-419. Licenses to sell.

(a) Licenses to sell coin-operated amusement devices shall be issued by the Director of the Department of Finance and Administration.

(b) Applications for such licenses shall be on a form prescribed by the director.

(c)(1) No license shall be issued to any corporation which is owned in whole or in part by any convicted felon or person who formerly held a license which was revoked until two (2) years subsequent to such revocation.

(2) The same restriction shall hold true on members of partnerships or individuals applying for licenses.

(3) Salespersons employed by licensees shall in like manner be subject to such restrictions.

(d) Any person, firm, partnership, limited liability company, or corporation who applies for a license to sell coin-operated amusement devices as provided in this section prior to the issuance of such license shall be required to procure a suitable surety bond in the principal sum of one thousand dollars (\$1,000) to ensure compliance with the provisions of this subchapter and to provide indemnity to any person who deals with the applicant in the event of the violation of this subchapter.

(e) The annual fee for each corporation, partnership, or individual which acquires a license to sell coin-operated amusement devices shall be twenty-five dollars (\$25.00), and additional annual licenses for salespersons employed by such licensees may be acquired for five dollars (\$5.00).

(f)(1) The director may revoke or suspend such licenses for cause.

(2) Any licensee shall be notified in writing that the revocation or suspension of its license is being considered and the reason therefor.

(3) The licensee shall have fifteen (15) days in which to notify the director that a hearing is desired, after which time a hearing shall be

held not less than fifteen (15) days subsequent to the expiration of the fifteen-day period of notice.

(4)(A) Any licensee whose license has been revoked or suspended may appeal to the Pulaski County Circuit Court by filing a copy of the notice of revocation or suspension with the clerk of the court within twenty (20) days of receipt thereof and causing the issuance of a summons to be served on the director. The hearing shall be de novo in the circuit court.

(B) Either party may appeal to the Supreme Court as in other cases.

History. Acts 1977, No. 553, §§ 12, 13, 17; A.S.A. 1947, §§ 84-2644, 84-2645, 84-2649; Acts 1995, No. 1160, § 33.

26-57-420. Notice to purchaser of tax consequences of sale required.

(a)(1) Before a sale of any coin-operated amusement device is concluded, the licensee or his or her salesperson shall notify the purchaser that the operation of the amusement device is subject to taxation as set forth in §§ 26-57-301 et seq. [repealed] and 26-57-402 — 26-57-407.

(2) All receipts, invoices, bills of sale, or other documents must contain thereon a notice citing the applicable sections of the law and warning the purchaser of the applicable tax.

(b)(1) Any sale which is made without notifying the purchaser of the existence of the aforementioned applicable sections of the law or when the documents executed in connection with the sale do not cite the appropriate statutes and warn of applicable tax shall be void, and the purchaser may at his or her option cancel the sale, whereupon the licensee shall immediately rebate the purchase price or the deposit made by the purchaser.

(2) The failure of the licensee to rebate such funds after demand by the purchaser shall entitle the purchaser to file suit against the bond of the licensee which is required by § 26-57-419(d), and the license of the licensee shall be revoked if the purchaser obtains a judgment against the bondsman.

History. Acts 1977, No. 553, §§ 14, 15; A.S.A. 1947, §§ 84-2646, 84-2647. seq. referred to in subdivision (a)(2) of this section was repealed by Acts 1993, No.

A.C.R.C. Notes. Section 26-57-301 et 344, § 2.

26-57-421. Selling in violation of subchapter a misdemeanor — Penalty.

Any person who sells, offers for sale, takes orders, or solicits for the sale of coin-operated amusement devices without first obtaining a license and making the bond provided in § 26-57-419 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed five hundred dollars (\$500) or by confinement in the county jail

for a period not exceeding sixty (60) days, or by both fine and confinement.

History. Acts 1977, No. 553, § 16; A.S.A. 1947, § 84-2648.

SUBCHAPTER 5 — TRAVEL BUREAUS OR SERVICES

SECTION.

26-57-501. Penalties.

26-57-502. Regulation and licensing.

26-57-503. Notice of engaging in business.

SECTION.

26-57-504. License fee.

26-57-505. Bond.

26-57-506. Disposition of tax.

Effective Dates. Acts 1939, No. 151, § 8: approved Feb. 28, 1939. Emergency clause provided: "Now, therefore, whereas the Old Age Pension Fund is in dire need of funds to care for the infirm and its beneficiaries, an emergency is declared and it is necessary for the preservation of the public peace, health and safety that this Act shall become effective without delay and take effect and be in full force from and after its passage."

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby

found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-57-501. Penalties.

Any person, firm, partnership, limited liability company, or corporation failing to comply with a provision of this subchapter shall be guilty of a violation and upon conviction shall be fined in a sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

History. Acts 1939, No. 151, § 6; A.S.A. 1947, § 84-2219; Acts 1995, No. 1160, § 34; 2005, No. 1994, § 177.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor."

26-57-502. Regulation and licensing.

The regulation and licensing of the business conducted in this state by what is known as travel bureaus or travel services operating for the purpose of securing transportation in private automobiles from one (1) destination to another on the share-expense basis both within and without the State of Arkansas is placed in the Revenue Division of the Department of Finance and Administration, and the Director of the Department of Finance and Administration is authorized to license and

collect the fees therefor and enforce this subchapter in its entirety by due process of law.

History. Acts 1939, No. 151, § 1; A.S.A. 1947, § 84-2214.

26-57-503. Notice of engaging in business.

(a) Any person, firm, partnership, limited liability company, or corporation in this state who shall enter into or conduct such a business as is described in § 26-57-502 immediately upon engaging in or commencing the business shall notify the Director of the Department of Finance and Administration by letter of that fact, setting forth the date of commencement and stating his or her intention to abide by all the provisions of this subchapter.

(b) The notice shall be filed by the director in such manner as will enable the director to properly inspect and record the latter compliance of such person with the provisions of this subchapter.

History. Acts 1939, No. 151, § 2; A.S.A. 1947, § 84-2215; Acts 1995, No. 1160, § 35.

26-57-504. License fee.

Any person, firm, partnership, limited liability company, or corporation now engaged in or who becomes engaged in a business as set forth in this subchapter is taxed a license of two hundred dollars (\$200) per year.

History. Acts 1939, No. 151, § 3; A.S.A. 1947, § 84-2216; Acts 1995, No. 1160, § 36.

26-57-505. Bond.

A person, firm, partnership, limited liability company, or corporation shall also make a bond to the State of Arkansas in the sum of one thousand dollars (\$1,000) for the faithful performance under this subchapter.

History. Acts 1939, No. 151, § 4; A.S.A. 1947, § 84-2217; Acts 1995, No. 1160, § 37.

26-57-506. Disposition of tax.

The Director of the Department of Finance and Administration shall remit the funds so collected to the State Treasury, and the Treasurer of State is directed to credit all such moneys to the Old Age Pension Fund.

History. Acts 1939, No. 151, § 5; A.S.A. 1947, § 84-2218.

SUBCHAPTER 6 — INSURANCE PREMIUM TAXES

SECTION.

- 26-57-601. Tax additional.
- 26-57-602. Local taxes.
- 26-57-603. Tax reports generally.
- 26-57-604. Remittance of tax.
- 26-57-605. Wet marine and foreign trade insurers — Report and remittance of tax.
- 26-57-606. [Repealed.]
- 26-57-607. Failure to report and pay tax.
- 26-57-608. Nonliability of officers as to taxes or fees paid under invalid laws.
- 26-57-609. [Repealed.]
- 26-57-610. Disposition of taxes.

SECTION.

- 26-57-611. Disposition of nonallocated funds.
- 26-57-612. Quarterly premium taxes.
- 26-57-613. Exceptions.
- 26-57-614. Fire protection services — Additional tax.
- 26-57-615. Domiciled insurers' premium tax credit for certain fees payable to other jurisdictions.
- 26-57-616. Time limitations for assessments, collection, and refunds.

Cross References. Appropriation of insurance premium tax for firemen's relief and pension funds, Fire and Police Pension Review Board, and Fire and Police Pension Guarantee Fund, § 24-11-809.

Effective Dates. Acts 1959, No. 304, § 3: effective 12:01 o'clock a.m. on Jan. 1, 1960.

Acts 1959, No. 697, § 697: effective 12:01 o'clock a.m. on Jan. 1, 1960.

Acts 1968 (1st Ex. Sess.), No. 24, § 10: Feb. 19, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly that benefits under Firemen's Relief and Pension Funds are inadequate; that additional funds are necessary to properly finance the Firemen's Relief and Pension Funds in order that benefits to firemen and their dependents may be increased to meet the increasing cost of living and in order to assure that competent persons may be retained in the various Fire Departments to provide the fire protection that is essential to public health and safety in this State; and, that this Act will provide additional needed funds and will increase benefits under the Firemen's Relief and Pension Fund. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

Acts 1979, No. 824, § 2: Jan. 1, 1980.

Acts 1985, No. 804, § 33: Apr. 3, 1985. Emergency clause provided: "It is hereby

found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 992, § 7: Jan. 1, 1985.

Acts 1989, No. 772, § 27: Mar. 21, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 833, § 9: Jan. 1, 1992.

Acts 1992 (1st Ex. Sess.), No. 10, § 14: Mar. 4, 1992. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, meeting in First Extraordinary Session, that an appropriation to the Department of Finance and Administration is necessary in order to disburse funds collected after January 1, 1992, under the provisions of Arkansas Code § 14-284-401 et seq. and

§ 26-57-614, and that the creation of the Fire Protection Premium Tax Fund will allow those monies to be disbursed for the provision of adequate fire protection services in the most efficient manner. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 901, § 52: Apr. 6, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws addressed in this omnibus Act on workers' compensation benefits and insurance licensure and other insurance regulatory issues are inadequate for the protection of the Arkansas public and immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this omnibus Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 881, § 28: Mar. 25, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly of the State of Arkansas that the present funeral pre-need laws, employee leasing firm laws, and other insurance laws are inadequate to protect the public. In pertinent part, the changes to the Insurance Code needed to assure the stability of funding for the Fraud Investigation Division of the Department must be enacted in the laws of this state well before the new fiscal year beginning July 1, 1999. The changes to authorized appropriations, as well as changes to the disability (health) insurance laws on individuals to conform to the federal laws on group policies with guaranteed renewability require immediate adoption; and unless this emergency clause is adopted, this act might not become effective until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect

from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1570, § 10: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that certain provisions of the law governing the Firemen's and Police Officers' Pension and Relief Fund need to be amended concerning the distribution and allocation of funds and that the effective administration of State government makes it necessary for these changes to begin immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

A.L.R. State "retaliatory" statutes imposing special taxes or fees on foreign insurers doing business within the state. 30 A.L.R.4th 873.

U. Ark. Little Rock L.J. Survey, Insurance, 12 U. Ark. Little Rock L.J. 643.

CASE NOTES

Constitutionality.

Acts 1963, No. 527 which purported to amend Acts 1959, No. 148, § 69, was in violation of Ark. Const., Amend. No. 19 (Ark. Const., Art. 5, §§ 37-41), which prohibits any increase in taxes except by the vote of three-fourths of each house. *Combs v. Glen Falls Ins. Co.*, 237 Ark. 745, 375 S.W.2d 809 (1964).

Notwithstanding the separability provision of Acts 1963, No. 527, § 2, the Supreme Court, in holding the tax increase provisions of Acts 1963, No. 527, amend-

ing Acts 1959, No. 148, § 69, invalid, held that the alternatives offered by the section to insurance companies of paying the higher tax or making extensive investments in Arkansas were complementary and interdependent and to enforce one without the other would be a perversion of legislative intent and equivalent to the enactment of a statute the General Assembly did not see fit to adopt. *Combs v. Glen Falls Ins. Co.*, 237 Ark. 745, 375 S.W.2d 809 (1964).

26-57-601. Tax additional.

The premium tax levied by §§ 26-57-603 — 26-57-605 shall be in addition to the tax paid by casualty companies and self-insurers writing workers' compensation insurance under § 11-9-101 et seq.

History. Acts 1959, No. 148, § 69; 1979, No. 908, § 1; 1981, No. 595, § 1; A.S.A. 1947, § 66-2302; Acts 1987, No. 1033, § 1.

Publisher's Notes. Acts 1987, No. 1033, § 10, provided: "The provisions of this Act as to premium taxes shall apply to

all premiums which are collected in calendar year 1987 upon which the premium tax is reported and paid in 1988, and the provisions of this Act as to income taxes shall apply to all income years beginning on or after January 1, 1987."

26-57-602. Local taxes.

The taxes levied by §§ 26-57-603 — 26-57-605 upon any insurer shall be in lieu of all other state, county, city, town, or municipal taxes on premium receipts. No county, city, town, or municipality shall impose any privilege tax or license fee upon any such insurer or its agents for the privilege of transacting the business of insurance.

History. Acts 1959, No. 148, § 69; 1979, No. 908, § 1; 1981, No. 595, § 1; A.S.A. 1947, § 66-2302; Acts 1987, No. 1033, § 1.

Publisher's Notes. As to applicability of Acts 1987, No. 1033, see Publisher's Notes, § 26-57-601.

26-57-603. Tax reports generally.

(a) Each authorized, each formerly authorized, and each unauthorized insurer as defined in § 23-60-102(12) shall file with the Insurance Commissioner on or before March 1 of each year a report in form as prescribed by the commissioner showing, except as to wet marine and foreign trade insurance as defined in § 26-57-605(d), total direct premium income including policy, membership, and other fees, and all other considerations for insurance, from all kinds and classes of insurance, whether designated as premium or otherwise, written by it during the preceding calendar year on account of policies and contracts covering property, subjects, or risks located, resident, or to be performed in this state, with proper proportionate allocation of premium as to such persons, property, subjects, or risks in this state insured under policies or contracts covering persons, property, subjects, or risks located or resident in more than one (1) state, after deducting from the total direct premium income dividends and similar returns paid or credited to policyholders other than as to life insurance, applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, and the amount of reduction in, or refund of, premiums allowed to industrial life policyholders for payment of premiums directly to an office of the insurer.

(b) No deduction shall be made of the cash surrender values of policies.

(c) Considerations received on annuity contracts shall not be included in total direct premium income and shall not be subject to tax.

(d) Each authorized, unauthorized, or formerly authorized domestic, foreign, and alien insurer shall pay to the Treasurer of State through the commissioner, as a tax imposed for the privilege of transacting business in this state, a tax upon the net premiums and net considerations, except as provided in § 26-57-605. The tax shall be computed thereon at a rate of two and one-half percent (2½%). The premiums written shall be reported at such times and in such form and context as prescribed by the commissioner; and the taxes shall be paid on a quarterly estimate basis as prescribed by the commissioner and shall be reconciled annually at the time of filing the annual report required in subsections (a)-(c) of this section.

(e) That portion of the tax paid by an insurer in accordance with § 24-11-809 shall be separately specified in the report in such manner as may be prescribed by the commissioner to enable the commissioner to make a proper apportionment of the funds.

History. Acts 1959, No. 148, § 69; 1968 (1st Ex. Sess.), No. 24, § 5; 1979, No. 908, § 1; 1981, No. 595, § 1; 1985, No. 804, § 6; A.S.A. 1947, § 66-2302; Acts 1987, No. 1033, § 1; 1989, No. 772, § 19.

Publisher's Notes. Acts 1985, No. 804, § 32, provided, in part, that the act would

be cumulative of prior laws, and that no prior law or part of a law would be deemed to be in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

As to applicability of Acts 1987, No. 1033, see Publisher's Notes, § 26-57-601.

26-57-604. Remittance of tax.

(a)(1)(A) Coincident with the filing of the tax report, each authorized life or accident and health insurer, including licensed health maintenance organizations, may apply for a credit for the noncommissioned salaries and wages of the insurer's Arkansas employees which are paid in connection with its insurance operations.

(B) The credit may be applied as an offset against the premium tax imposed in § 26-57-603(d) on life and accident and health insurance.

(2)(A) In no event shall the offset reduce the accident and health premium tax due by more than eighty percent (80%).

(B) In no event shall the offset reduce the life premium tax due by more than seventy percent (70%).

(C) The taxes shall be reported and paid on a quarterly estimated basis as prescribed by the Insurance Commissioner and shall be reconciled annually at the time of filing the annual report required in § 26-57-603(a)-(c).

(3) Furthermore, an employee must be employed for six (6) months in the facilities for the salary or wages to be eligible to qualify for the life or disability premium tax credit.

(4)(A)(i) Except as provided in subdivision (a)(4)(B) of this section, on or before March 1 of each year, any such authorized life or accident and health insurer, including health maintenance organizations, desiring to qualify under this provision shall furnish the appropriate data and request on forms prescribed by the commissioner.

(ii) For purposes of calculating the taxes under §§ 23-63-102 — 23-63-104, an insurer qualifying for a credit under this section shall compute the tax due under §§ 23-63-102 — 23-63-104, if any, by using an Arkansas premium tax rate of two and one-half percent (2½%).

(B)(i) Subdivision (a)(4)(A) of this section shall only apply for tax years beginning prior to January 1, 2000.

(ii) On or before March 1 of 2000 and each year thereafter, any such authorized life or disability insurer, including health maintenance organizations, desiring to qualify under this provision shall furnish the appropriate data and request on forms prescribed by the commissioner.

(iii) However, for purposes of calculating the taxes under §§ 23-63-102 — 23-63-104, an insurer qualifying for a credit under this section shall compute the tax due under §§ 23-63-102 — 23-63-104, if any, by using an Arkansas premium tax rate of two and one-half percent (2½%) without regard to the credit specified in this section.

(b)(1) Each insurer other than those in § 26-57-603(d) and subsection (a) of this section shall pay to the Treasurer of State through the commissioner, as a tax imposed for the privilege of transacting business in this state, a tax at the rate of two and one-half percent (2½%) upon the net premiums and net considerations on all kinds of insurance, except as provided in § 26-57-605.

(2) The taxes shall be paid on a quarterly estimate basis as prescribed by the commissioner and shall be reconciled annually at the time of filing the annual report required in § 26-57-603(a)-(c).

History. Acts 1959, No. 148, § 69; 1975, No. 450, § 1; 1979, No. 908, § 1; 1981, No. 595, § 1; A.S.A. 1947, § 66-2302; Acts 1987, No. 1033, § 1; 1989, No. 772, § 20; 1999, No. 881, § 23; 2001, No. 1604, § 124.

Publisher's Notes. As to applicability of Acts 1987, No. 1033, see Publisher's Notes, § 26-57-601.

CASE NOTES

ANALYSIS

In General.
Purpose.
Exemptions.

In General.

Tax levied by this section is a privilege tax rather than an income tax. *American Ins. Co. v. Harkey*, 247 Ark. 297, 445 S.W.2d 84 (1969).

Insurance company whose authority to do business in Arkansas was revoked was liable for tax on premiums collected before its authority was revoked, but was not liable for tax on premiums collected after such revocation. *American Ins. Co. v. Harkey*, 247 Ark. 297, 445 S.W.2d 84 (1969).

Purpose.

Immunity of domestic corporations from gross premium tax was intended to give encouragement and to promote domestic development and not as an advan-

tage to be claimed by policyholders. *United Mut. Life Ins. Co. v. State ex rel. Att'y Gen.*, 194 Ark. 371, 108 S.W.2d 484 (1937) (decision under prior law).

Exemptions.

A legal reserve mutual company was not liable for taxes on premiums collected from policyholders on business acquired from a fraternal beneficiary company when the fraternal beneficiary company was itself exempt from payment of such taxes. *United Mut. Life Ins. Co. v. State ex rel. Att'y Gen.*, 194 Ark. 371, 108 S.W.2d 484 (1937) (decision under prior law).

Exemption provisions from gross premium tax in favor of fraternal beneficiary society were intended to inure to the certificate holders as distinguished from the parent agency. *United Mut. Life Ins. Co. v. State ex rel. Att'y Gen.*, 194 Ark. 371, 108 S.W.2d 484 (1937) (decision under prior law).

26-57-605. Wet marine and foreign trade insurers — Report and remittance of tax.

(a) As to wet marine and foreign trade insurance written in this state during the preceding calendar year, on or before March 1 of each year, each authorized, unauthorized, or formerly authorized insurer shall file its report with the Insurance Commissioner, on forms as prescribed by the commissioner of its gross underwriting profit thereon.

(b) As a tax imposed for the privilege of transacting such insurance in this state, a tax of three-quarters of one percent ($\frac{3}{4}\%$) of the gross underwriting profit shall be reported and paid on a quarterly estimate basis at such times and upon forms as shall be prescribed by the commissioner and reconciled annually at the time of filing the annual report.

(c)(1) The gross underwriting profit shall be ascertained by deducting from the net premiums, which are the gross premiums less all return premiums and premiums for reinsurance, on wet marine and

foreign trade insurance contracts, the net losses paid, which are the gross losses paid less salvage and recoveries on reinsurance ceded, during the calendar year under those contracts.

(2) In the case of insurers issuing participating contracts, the gross underwriting profit shall not include for computation of the tax prescribed by this section the amounts refunded or paid as participation dividends by the insurers to the holders of the contracts.

(d) As used in this subchapter, "wet marine and foreign trade insurance" includes only:

(1) Insurances upon vessels, crafts, hulls, and of interests therein, of, or with relations thereto;

(2) Insurance of marine builder's risks, marine war risks, and contracts of marine protection and indemnity insurance;

(3) Insurance of freights and disbursements pertaining to a subject of insurance coming within this definition; and

(4) Insurance of personal property and interests therein, in course of exportation from or importation into any country, or in course of transportation, and while being prepared for and while awaiting shipment, and during any delays, storage, trans-shipment, or reshipment incident thereto.

History. Acts 1959, No. 148, § 69; 1979, No. 908, § 1; 1981, No. 595, § 1; A.S.A. 1947, § 66-2302; Acts 1987, No. 1033, § 1; 1989, No. 772, § 21.

§ 69, in part, is also codified as § 23-60-102.

As to applicability of Acts 1987, No. 1033, see Publisher's Notes, § 26-57-601.

Publisher's Notes. Acts 1959, No. 148,

CASE NOTES

In General.

Tax due on March 1 is on privilege exercised preceding year and is based on premiums received in that year while

company was authorized to do business in Arkansas. *American Ins. Co. v. Harkey*, 247 Ark. 297, 445 S.W.2d 84 (1969).

26-57-606. [Repealed.]

Publisher's Notes. This section, concerning foreign automobile insurance companies and annual reports, was re-

pealed by Acts 2005, No. 506, § 48. The section was derived from Acts 1979, No. 824, § 1; A.S.A. 1947, § 66-2302.2.

26-57-607. Failure to report and pay tax.

(a) The Insurance Commissioner in his or her discretion may suspend or revoke the certificate of authority of any insurer or health maintenance organization that fails to report and pay the premium tax levied under §§ 26-57-604 and 26-57-605 on the date due or during any reasonable extension of time which may have been expressly granted by the commissioner for good cause upon the insurer's request.

(b) In addition, any insurer or health maintenance organization that fails to report or pay the tax when due shall be subject to a penalty of one hundred dollars (\$100) for each day of the delinquency. The penalty

shall be collected by the commissioner if necessary by a civil suit therefor brought by the commissioner in the Pulaski County Circuit Court, unless the penalty is waived by the commissioner upon a showing by the insurer or organization of good cause for its failure to file its report or tax payment on or before the date due.

History. Acts 1959, No. 148, § 69; A.S.A. 1947, § 66-2302; Acts 1989, No. 1979, No. 908, § 1; 1981, No. 595, § 1; 772, § 22.

26-57-608. Nonliability of officers as to taxes or fees paid under invalid laws.

No personal liability shall arise against any director, trustee, officer, or agent of any insurer by reason of any payment made by or on behalf of such insurer on account of any taxes, licenses, or fees paid pursuant to any law, even though such law is subsequently held to be invalid.

History. Acts 1959, No. 148, § 71; A.S.A. 1947, § 66-2304.

26-57-609. [Repealed.]

Publisher's Notes. This section, concerning the allocation of tax, was repealed by Acts 1999, No. 1570, § 5. The section was derived from Acts 1975, No. 450, § 2; 1985, No. 992, § 5; A.S.A. 1947, § 66-2302.1; Acts 1987, No. 1033, § 2.

26-57-610. Disposition of taxes.

The Insurance Commissioner shall deposit all taxes collected under the provisions of §§ 26-57-604 and 26-57-605 into the State Treasury, and on the last business day of each month the Treasurer of State shall classify such taxes as to the following types of revenues and credit the net amounts respectively of taxes collected under the provisions of §§ 26-57-604 and 26-57-605 as indicated in this section:

(1) The taxes based on premiums collected as special revenues shall be distributed to the respective cities, incorporated towns, and fire protection districts in this state for credit to the respective firemen's relief and pension funds;

(2) Except as provided in subdivision (3) of this section, all other taxes collected under §§ 26-57-604 and 26-57-605 shall be classified as general revenues, and the net amount of taxes collected under §§ 26-57-604 and 26-57-605 shall be credited to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.; and

(3) Amounts collected under §§ 26-57-604 and 26-57-605 above the forecasted level for insurance premium taxes set by the Chief Fiscal Officer of the State under § 10-3-1404(a) shall be credited by the Treasurer of State to the Arkansas Medicaid Program Trust Fund and shall be disbursed and used for the sole purpose of increasing per diem reimbursement for general hospital inpatient services provided to

Medicaid beneficiaries and to increase private duty nursing rates for registered nurses and licensed practical nurses in home health agencies in the following amounts:

	FY 2006	FY 2007
(A) Raise the capitated daily rate for hospitals to a maximum of \$850	\$6,500,000	\$6,500,000
(B) Medicaid private duty nursing rate increase for registered nurses and licensed practical nurses	\$200,000	\$200,000.

History. Acts 1959, No. 148, § 70; 1959, No. 304, § 2; 1968 (1st Ex. Sess.), No. 24, § 3; A.S.A. 1947, § 66-2303; Acts 2005, No. 2222, § 1.

Amendments. The 2005 amendment inserted “except as provided in subdivi-

sion (3) of this section” in (2); added (3); and made related changes.

Cross References. Workmen’s compensation companies, additional charges, § 11-9-301.

CASE NOTES

ANALYSIS

Constitutionality.
Applicability.

Constitutionality.

The imposition of a so-called tax by Acts 1917, No. 264, § 1, consisting of a percentage of the premiums paid, upon corporations which insured in other states in companies not authorized to do business in this state was held invalid under U.S. Const. Amend. 14. *Saint Louis Cotton Compress Co. v. Arkansas*, 260 U.S. 346, 43 S. Ct. 125, 67 L. Ed. 297 (1922) (decision under prior law).

Acts 1931, No. 235, imposing a higher privilege tax on gross receipts of foreign companies, did not violate U.S. Const. Amend. 14, since the classification was neither capricious nor arbitrary. *Central States Life Ins. Co. v. State*, 190 Ark. 605, 80 S.W.2d 628 (1935) (decision under prior law).

Acts 1931, No. 235 was not passed in violation of Const. Art. 5, § 31, although passed by a mere majority vote, since funds derived therefrom were to be used for public health and the necessary ex-

penses of state government. *Central States Life Ins. Co. v. State*, 190 Ark. 605, 80 S.W.2d 628 (1935) (decision under prior law).

Applicability.

Acts 1931, No. 235 was to apply to gross premium receipts for the entire year 1931, although practically one-half of the fiscal year 1931 expired before the act became effective. *Du Laney v. Continental Life Ins. Co.*, 185 Ark. 517, 47 S.W.2d 1082 (1932) (decision under prior law).

Money paid for annuity insurance was taxable. *State ex rel. Holt v. New York Life Ins. Co.*, 198 Ark. 820, 131 S.W.2d 639 (1939) (decision under prior law).

State was not entitled to recover in suit against life insurance company for back taxes on annuity insurance premiums where insurance company made report of the premiums collected and paid the taxes due thereon, there being no element of fraud in its failure to report its annuity premiums, as the administrative officers of the state were of the opinion that such premiums were not taxable. *State ex rel. Holt v. New York Life Ins. Co.*, 198 Ark. 820, 131 S.W.2d 639 (1939) (decision under prior law).

26-57-611. Disposition of nonallocated funds.

The Insurance Commissioner shall deposit all premium taxes collected under this subchapter which are not allocated and appropriated for the various funds under the Workers' Compensation Law, § 11-9-101 et seq., for the Arkansas Fire and Police Pension Review Board and firemen's relief and pension funds under §§ 24-11-809, 24-11-810 [repealed], and 26-57-609 [repealed], and for the Arkansas Fire and Police Pension and Review Board and police officer's pension and relief funds under § 24-11-301 into the State Treasury as general revenues.

History. Acts 1987, No. 1033, § 1.

and Acts 1999, No. 1570, § 5, respectively.

A.C.R.C. Notes. Sections 24-11-810 and 26-57-609 referred to in this section were repealed by Acts 2003, No. 1797, § 6,

Publisher's Notes. As to applicability of Acts 1987, No. 1033, see Publisher's Notes, § 26-57-601.

26-57-612. Quarterly premium taxes.

Any insurer, health maintenance organization, or other entity which is required by any section of the Arkansas Code to report and pay quarterly premium taxes, and has a total quarterly premium tax due of twenty-five dollars (\$25.00) or less may defer payment of such sum to the following quarter or quarters of that calendar year, provided such tax payment is remitted to the State Insurance Department no later than March 1 of the following year coincident with the required filing of the annual statement.

History. Acts 1989, No. 772, § 23.

26-57-613. Exceptions.

The provisions of this subchapter shall not be applicable to surplus line insurers on the Insurance Commissioner's approved list.

History. Acts 1989, No. 772, § 23.

26-57-614. Fire protection services — Additional tax.

(a)(1) It is found and determined by the General Assembly that additional funding is needed to improve the fire protection services in this state.

(2) It is further found and determined that the public policy of this state is to provide adequate fire protection services for property of citizens through the use of properly trained and equipped firefighters, and that the provisions of this section and §§ 14-284-401 — 14-284-409 are necessary in furtherance of the public health and safety.

(b) In addition to the premium taxes collected from insurers under other provisions of Arkansas law, each authorized insurer and each formerly authorized insurer shall pay to the Fire Protection Premium Tax Fund a tax at the rate of one-half of one percent ($\frac{1}{2}\%$) on net direct written premiums for coverages upon real and personal property, including, but not limited to, fire, allied lines, farm owner and home-

owner multiple peril, vehicle physical damage, and vehicle collision, or any combination thereof.

(c) This tax shall be collected by the Insurance Commissioner from the insurers at the same time and in the same manner as provided in the premium tax sections of the laws of this state under this subchapter and deposited into the fund.

(d) An assessment upon which this premium tax is based shall be made on forms prescribed by the commissioner.

(e)(1) A premium tax payment shall be made upon a company check payable to the fund.

(2) If the cumulative premium tax payment is less than twenty-five dollars (\$25.00), then the insurer may defer payment to the following quarter or quarters of the current calendar year but shall pay the tax no later than March 1 of the following year.

(f) The provisions of this section and § 14-284-401 et seq. are intended to be supplemental to current provisions of Arkansas law, and shall not be construed as repealing or superseding any other laws applicable thereto.

History. Acts 1991, No. 833, §§ 1, 2, 8; 1992 (1st Ex. Sess.), No. 10, § 7; 2005, No. 506, § 49.

Publisher's Notes. Acts 1991, No. 833, § 1 is also codified as § 14-284-401.

Acts 1991, No. 833, § 8 is also codified as § 14-284-402.

Amendments. The 2005 amendment redesignated former (e) as present (e)(1); and added (e)(2).

Cross References. Dues for volunteer fire departments, § 14-20-108.

26-57-615. Domiciled insurers' premium tax credit for certain fees payable to other jurisdictions.

(a) If, by the laws of any state other than Arkansas or by the retaliatory laws of any state other than Arkansas, any insurer domiciled in Arkansas on or after April 6, 1993, shall be required to pay any fee based on the insurer's premium volume in such other state of licensure, and the fee imposed by such other state is due and payable either because the administrative and financial regulatory fee, "financial fee", based on premium volume assessed by the State Insurance Department Trust Fund Act, § 23-61-701 et seq., as it is popularly known, on insurers licensed in Arkansas and organized or domiciled in such other state is greater than the comparable fee assessed in such other state, or such other state has no comparable fee but requires payment on a retaliatory basis, then to the extent such fee amounts are legally due and are paid in such other state, any insurer domiciled in Arkansas on and after April 6, 1993, may claim a dollar-for-dollar credit for such fees paid against its annual premium taxes due the State of Arkansas under this subchapter, but such credit shall only be calculated on the amount which would not have been required to be paid in such other state of licensure in the absence of the existence of the financial fee assessed under the State Insurance Department Trust Fund Act, § 23-61-701 et seq., and in no event shall the credit

permitted by this section exceed ninety percent (90%) of the insurer's annual premium tax due the State of Arkansas.

(b)(1) Credits for fees paid in states of licensure other than Arkansas in calendar year 1993 shall be allowed insurers domiciled in this state pursuant to subsection (a) of this section against annual Arkansas premium taxes reported and paid on March 1, 1994, and, in subsequent years, such credits permitted in subsection (a) of this section shall be reported annually on March 1.

(2) The Insurance Commissioner shall prescribe the forms for reporting such credits and further shall examine insurer claims for credit made under this section.

(3) If the commissioner shall determine that any amount for which a credit shall have been claimed was not legally due to another state, or that an error exists in the amount of the credit shown on such return, or the amount claimed is a refund or refunded, the commissioner shall take appropriate action under any and all civil and administrative Arkansas laws at the commissioner's disposal, including suspension or revocation of the Arkansas certificate of authority of the noncomplying insurer, for collection and recovery of the premium tax due resulting from the disallowance of a claim for credit made under this section or to disallow any such claim for refund.

History. Acts 1993, No. 901, § 44.

26-57-616. Time limitations for assessments, collection, and refunds.

(a) No assessment of any insurance premium tax levied under §§ 11-9-301 — 11-9-307, 23-75-119, 23-76-131, or this subchapter shall be made after the expiration of five (5) years from the date the tax report was required to be filed or the date the tax report was filed, whichever period expires later.

(b) No amended tax report or verified claim for credit or refund of an overpayment of any insurance premium tax collected under §§ 11-9-301 — 11-9-307, 23-75-119, 23-76-131, or this subchapter shall be filed after five (5) years from the date the tax report was required to be filed or the date the tax report was filed, whichever period expires later, nor shall any credit, overpayment, or previously unclaimed offset, deduction, or other reduction be paid or allowed.

(c) All usual and customary records used in the preparation of a tax report shall be maintained for a period of five (5) years after the tax report was required to be filed or was filed, whichever period expires later.

History. Acts 1999, No. 977, § 1.

SUBCHAPTER 7 — INEDIBLE FATS AND OILS COLLECTORS

SECTION.

26-57-701 — 26-57-705. [Repealed.]

26-57-701 — 26-57-705. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1993, No. 111, § 1 and No. 344, § 2. The subchapter was derived from the following sources:

26-57-701. Acts 1975, No. 323, § 1; A.S.A. 1947, § 84-2220.

26-57-702. Acts 1975, No. 323, § 2; A.S.A. 1947, § 84-2221.

26-57-703. Acts 1975, No. 323, § 3; A.S.A. 1947, § 84-2222.

26-57-704. Acts 1975, No. 323, § 4; A.S.A. 1947, § 84-2223.

26-57-705. Acts 1975, No. 323, § 5; A.S.A. 1947, § 84-2224.

SUBCHAPTER 8 — ADDITIONAL TAX ON TOBACCO PRODUCTS

SECTION.

26-57-801. Excise tax.

26-57-802. Additional tax — Applicability — Reporting and remitting.

26-57-803. Additional tax — Applicability.

SECTION.

26-57-804. Additional tax on cigarettes.

26-57-805. Additional tax on tobacco products other than cigarettes.

Effective Dates. Acts 1991, No. 1135, § 20: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that the distribution of general revenues and the creation of the various funds and fund accounts are essential to be in force at the beginning of the state fiscal year and that in the event that the General Assembly extends beyond the sixty day limit, the effective date of this act would not begin at that time creating confusion and not permitting the agencies to implement those programs as approved by the General Assembly. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1991, No. 1211, § 9: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is urgent need for additional revenues to fund the Meals on Wheels Program and other transportation services for the benefit of elderly citizens; that this act is designed to provide such

additional revenues and should be given effect as soon as is practical. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1991."

Acts 1992 (2nd Ex. Sess.), No. 2, § 7: Feb. 1, 1993. Emergency clause provided: "It is hereby found and determined that the State of Arkansas is lacking adequate funds to provide for the healthcare of its citizens covered by Medicaid; that increased funds must be raised to adequately provide for those needs; and that this act is designed to provide the necessary revenues to the state sufficient to meet these needs. Therefore, an emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective on and after February 1, 1993."

Acts 1993, No. 1177, § 2: Feb. 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that this act amends Act 2 of the Second Extraordinary Session of the 78th

General Assembly; that Act 2 goes into effect on February 1, 1993; that this act should go into effect at the same time that Act 2 goes into effect; and that unless this emergency clause is adopted this act will not go into effect until July, 1993. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after February 1, 1993."

Acts 2003 (1st Ex. Sess.), No. 38, § 4: May 8, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that revenue available for the support of necessary state services has declined significantly as a result of the nationwide

economic slowdown; that without additional revenue some state services will be reduced or eliminated; that some Arkansas residents will suffer as a result of service reductions or cuts; and that this bill will provide the necessary revenue to avoid state service reductions or cuts. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 71 Am. Jur. 2d State Tax, § 359.
§ 28 et seq.

26-57-801. Excise tax.

(a) Every person required by the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., to pay the excise tax on tobacco products and every other person selling cigarette paper at wholesale within this state shall also pay an excise tax on the sale of cigarette paper.

(b) The tax shall be in the amount of twenty-five cents (25¢) per package of approximately thirty-two (32) sheets.

(c) The tax shall be remitted to the Director of the Department of Finance and Administration at the same time and in the same manner as prescribed by the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

(d) The director shall promulgate such regulations as the director deems necessary for the implementation of this section.

History. Acts 1987, No. 1045, § 1.

26-57-802. Additional tax — Applicability — Reporting and remitting.

(a) In addition to any other taxes levied on cigarettes, there is levied a tax of fifty cents (50¢) per one thousand (1000) cigarettes sold in the state.

(b)(1) The additional tax levied in this section shall also be applicable to cigarettes sold in Arkansas within three hundred feet (300') of a state line or in any city that adjoins a state line. It is the intent of this section

that the rate of tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line or in any Arkansas city that adjoins a state line shall be:

(A) The rate imposed by law on cigarettes sold in the adjoining state plus the fifty cents (50¢) per one thousand (1,000) cigarettes levied in this section and cited in § 26-57-803(a)(2); or

(B) The rate imposed by law on cigarettes sold in the adjoining state plus the twenty-five cents (25¢) per one thousand (1,000) cigarettes levied in this section and cited in § 26-57-803(a)(3).

(2) The rate shall not exceed the total tax levied on cigarettes in this state.

(c) The additional tax levied in this section shall be reported and remitted in the same manner and at the same time as other taxes levied on cigarettes in the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

(d)(1) The first three million dollars (\$3,000,000) of the net revenues derived from the additional tax levied in this section shall be deposited into the State Treasury to the credit of the Aging and Adult Services Fund Account, to be used exclusively for transportation services benefitting the elderly, including the Meals on Wheels Program and the remainder shall be deposited into the State Treasury as general revenues.

(2) As used in this subsection and pertaining to taxes levied on cigarettes, "the first three million dollars (\$3,000,000) of the net revenues derived from the additional tax" means the first three million dollars (\$3,000,000) each year of the net revenues derived from the additional tax.

(e) As provided in § 26-57-244, the Director of the Department of Finance and Administration may make a direct assessment of excise tax against any person in possession of an untaxed tobacco product or unstamped cigarettes.

History. Acts 1991, No. 1135, § 18; 1991, No. 1211, § 1-4; 2001, No. 1173, § 1; 2007, No. 817, § 3.

Amendments. The 2007 amendment added (e).

Effective Dates. Acts 1991, No. 1211, § 5, provided:

"The tax levied herein shall be in effect on and after July 1, 1991."

CASE NOTES

Cited: Porter v. McCuen, 310 Ark. 562, 839 S.W.2d 512 (1992).

26-57-803. Additional tax — Applicability.

(a)(1) In addition to the excise or privilege taxes levied under §§ 26-57-208 and 26-57-802, there is levied a tax of four dollars and seventy-five cents (\$4.75) per one thousand (1,000) cigarettes sold in the state.

(2) Whenever there are two (2) adjoining cities, each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in such adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside of Arkansas plus the fifty cents (50¢) per one thousand (1,000) cigarettes presently imposed by § 26-57-802. The tax shall not exceed the tax upon cigarettes imposed by this subchapter.

(3) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line, in any Arkansas city which adjoins a state line, or in any city which is separated only by a navigable river from a city which adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state plus the twenty-five cents (25¢) per one thousand (1,000) cigarettes presently imposed by § 26-57-802. The tax shall not exceed the tax upon cigarettes imposed by this subchapter.

(b) In addition to the tax imposed by § 26-57-208(2), there is levied an additional excise or privilege tax on the sale of tobacco products other than cigarettes by wholesalers to retailers or by licensed retailers to the Director of the Department of Finance and Administration at seven percent (7%) of the manufacturer's selling price. The tax shall be computed before discounts.

(c)(1)(A) The taxes levied by this section shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(B) However, retailers shall be liable for reporting and paying these taxes when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(2)(A) Any taxpayer who fails to report and remit the tobacco tax due on tobacco products purchased from manufacturers, distributors, or wholesalers who are not licensed under § 26-57-214 shall be subject to the following penalties:

(i) Five percent (5%) of the total tobacco tax due for the first offense;

(ii) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(iii) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(B) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(3) The provisions of this subsection shall not affect the provisions of § 26-57-228.

(d) As provided in § 26-57-244, the director may make a direct assessment of excise tax against any person in possession of an untaxed tobacco product or unstamped cigarettes.

History. Acts 1992 (2nd Ex. Sess.), No. 1339, § 1; 1999, No. 1246, §§ 4, 5; 2, §§ 1, 2, 5; 1993, No. 1177, § 1; 1997, 2007, No. 817, § 4; 2007, No. 827, § 230.

Publisher's Notes. Acts 1997, No. 1339, became law without the Governor's signature.

Amendments. The 2007 amendment by No. 817 added present (d).

The 2007 amendment by No. 827 rewrote (a)(1) and (b), and deleted former (c).

26-57-804. Additional tax on cigarettes.

(a) In addition to the excise or privilege taxes levied under §§ 26-57-208, 26-57-802, 26-57-803, and 26-57-1101, there is levied an additional tax of twelve dollars and fifty cents (\$12.50) per one thousand (1,000) cigarettes sold in the state.

(b)(1)(A) Whenever there are two (2) adjoining cities each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in the adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside Arkansas.

(B) The tax shall not exceed the tax upon cigarettes imposed by Arkansas law.

(2)(A) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line in any Arkansas city that adjoins a state line or in any city that is separated only by a navigable river from a city that adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state.

(B) The tax shall not exceed the tax upon cigarettes imposed by Arkansas law.

(3)(A) A wholesaler or retailer shall not sell cigarettes to a retailer located outside a border zone described in subdivisions (b)(1) and (2) of this section unless the full amount of tax levied by this section and §§ 26-57-208, 26-57-802, 26-57-803, and 26-57-1101 without regard to any reduced border zone rate has been paid as evidenced by cigarette stamps affixed to each container of cigarettes.

(B) A retailer located outside a border zone described in subdivisions (b)(1) and (2) of this section shall not possess or offer for sale cigarettes unless the full amount of tax levied by this section and §§ 26-57-208, 26-57-802, 26-57-803, and 26-57-1101 without regard to any reduced border zone rate has been paid as evidenced by cigarette stamps affixed to each container of cigarettes.

(C) A violation of this subdivision (b)(3) shall be grounds for the suspension or revocation of a permit or license issued by the Director of the Arkansas Tobacco Control Board.

(c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-210 shall apply to this section.

(d) The additional tax levied under this section shall be imposed, reported, remitted, and administered in the same manner and at the same time as other taxes levied on cigarettes in the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

(e) The Director of the Department of Finance and Administration shall not pay the commission authorized by § 26-57-236(g) with respect to the tax levied by this section.

(f) The revenue derived from the additional tax imposed by this section shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections.

(g) As provided in § 26-57-244, the director may make a direct assessment of excise tax against any person in possession of unstamped cigarettes.

History. Acts 2003 (1st Ex. Sess.), No. 38, § 1; 2007, No. 817, § 5; 2007, No. 827, § 231.

A.C.R.C. Notes. As enacted by Acts 2003 (1st Ex. Sess.), No. 38, § 1, subsec-

tion (a) began: "Beginning June 1, 2003,".

Amendments. The 2007 amendment by No. 817 added present (g).

The 2007 amendment by No. 827 deleted former (d).

26-57-805. Additional tax on tobacco products other than cigarettes.

(a)(1) In addition to the excise or privilege taxes levied under §§ 26-57-208, 26-57-803, and 26-57-1102, there is levied an additional tax on tobacco products other than cigarettes on the first sale to wholesalers or retailers within the state at seven percent (7%) of the manufacturer's selling price.

(2) The tax shall be computed on the manufacturer's actual invoice price before discounts and deals.

(b)(1) The tax levied by this section shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(2) However, retailers shall be liable for reporting and paying this tax when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-210 shall apply to this section.

(d) The revenue derived from the additional tax imposed by this section shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections for that month.

(e) As provided in § 26-57-244, the Director of the Department of Finance and Administration may make a direct assessment of excise tax against any person in possession of an untaxed tobacco product.

History. Acts 2003 (1st Ex. Sess.), No. 38, § 2; 2007, No. 817, § 6.

A.C.R.C. Notes. As enacted by Acts 2003 (1st Ex. Sess.), No. 38, § 2, subdivi-

sion (a)(1) began: "Beginning June 1, 2003,".

Amendments. The 2007 amendment added (e).

SUBCHAPTER 9 — ARKANSAS SOFT DRINK TAX ACT

SECTION.

26-57-901. Title.

26-57-902. Definitions.

26-57-903. Administration.

SECTION.

26-57-904. Tax rate.

26-57-905. Exemptions.

26-57-906. Tax reporting.

SECTION.

26-57-907. Tax rate.

26-57-908. Disposition of revenues.

SECTION.

26-57-909. Licenses.

Publisher's Notes. Pursuant to Acts 1989, No. 987, § 3, former subchapter 9, former §§ 26-57-901 — 26-57-905, concerning nursing homes, expired on June 30, 1991. The former subchapter was derived from Acts 1989, No. 987, § 1.

Effective Dates. Acts 1992 (2nd Ex. Sess.), No. 7, § 13: Mar. 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious need of additional revenues which are necessary to provide adequate funding for essential services required by the citizens of this State and the provisions of this act are necessary to increase State revenues. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after March 1, 1993."

Acts 1993, No. 1073, § 35: July 1, 1993. Emergency Clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that the distribution of general revenues and the creation of the various funds and fund accounts are essential to be in force at the beginning of the state fiscal year and that in the event that the General Assembly extends beyond the sixty day limit, the

effective date of this act would not begin at that time creating confusion and not permitting the agencies to implement those programs as approved by the General Assembly. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1994 (2nd Ex. Sess.), No. 27, § 10: Aug. 23, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly meeting in Second Extraordinary Session, that it is necessary to establish a fund account on the books of the State Treasurer, State Auditor and Chief Fiscal Officer of the State in order to properly account for the funds of the Department of Human Services — Division of Youth Services and to continue to provide this essential governmental service; and that a delay in the effective date of this Act could work irreparable harm upon the proper administration and provision of essential governmental program. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval."

CASE NOTES

ANALYSIS

Applicability.
Referendum.

Applicability.

This subchapter nowhere prohibits the soft drink tax from being passed on to retailers. *Foxsmith, Inc. v. Coca-Cola Bot-*

tling Co., 323 Ark. 13, 912 S.W.2d 923 (1996).

Referendum.

The ballot title of the referendum on Acts 1992 (2d Ex. Sess.) No. 7, codified as § 26-57-901 et seq., held sufficient. *Walker v. McCuen*, 318 Ark. 508, 886 S.W.2d 577 (1994).

26-57-901. Title.

This subchapter shall be known and may be cited as the "Arkansas Soft Drink Tax Act" and is hereby declared to levy a state tax as defined in the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1992 (2nd Ex. Sess.), No. 7, § 1.

CASE NOTES**Applicability.**

This subchapter nowhere prohibits the soft drink tax from being passed on to

retailers. *Foxsmith, Inc. v. Coca-Cola Bottling Co.*, 323 Ark. 13, 912 S.W.2d 923 (1996).

26-57-902. Definitions.

(a) Terms used in this subchapter which are defined by the Arkansas Tax Procedure Act, § 26-18-101 et seq., shall have the meaning set out in the Arkansas Tax Procedure Act, § 26-18-101 et seq., unless otherwise provided or unless a different meaning is required by the use of the term.

(b) As used in this subchapter:

(1) "Bottle" means any closed or sealed glass, metal, paper, plastic, or any other type of container regardless of the size or shape of such container;

(2) "Bottled soft drinks" means any complete, ready to consume, nonalcoholic drink, whether carbonated or not, commonly referred to as a "soft drink", contained in any bottle;

(3) "Director" means the Director of the Department of Finance and Administration or his or her authorized agent;

(4) "Distributor, manufacturer, or wholesale dealer" means any person who receives, stores, manufactures, bottles, or sells bottled soft drinks, soft drink syrups, simple syrups, or powders, or base products for mixing, compounding, or making soft drinks for sale to retail dealers, other manufacturers, wholesale dealers, or distributors for resale purposes;

(5) "Milk" means:

(A) Natural liquid milk, regardless of animal source or butterfat content;

(B) Natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content; or

(C) Dehydrated natural milk, whether or not reconstituted;

(6) "Natural fruit juice" means the:

(A) Original liquid resulting from the pressing of fruit;

(B) Liquid resulting from the reconstitution of natural fruit juice concentrate; or

(C) Liquid resulting from the restoration of water to dehydrated natural fruit juice;

(7) "Natural vegetable juice" means the:

(A) Original liquid resulting from the pressing of vegetables;

(B) Liquid resulting from the reconstitution of natural vegetable juice concentrate; or

(C) Liquid resulting from the restoration of water to dehydrated natural vegetable juice;

(8) "Nonalcoholic beverage" means and includes all beverages not subject to tax under § 3-7-104;

(9) "Place of business" means any place:

(A) Where soft drinks, syrups, simple syrups, powder, or base products are manufactured; or

(B) Where bottled soft drinks, soft drink syrup, simple syrup, soft drink powder, or other soft drink base product, or any other item taxed under this subchapter is received;

(10) "Powder" or "other base" means a solid mixture of basic ingredients used in making, mixing, or compounding soft drinks by mixing the powder or other base with water, ice, syrup or simple syrup, fruits, vegetables, fruit juice, vegetable juice, or any other product suitable to make a complete soft drink;

(11) "Retailer" or "retail dealer" means any person, other than a manufacturer, distributor, or wholesaler, who receives, stores, mixes, compounds, or manufactures any soft drink and sells or otherwise dispenses the soft drink to the ultimate consumer;

(12)(A) "Sale" means the transfer of title or possession for a valuable consideration of tangible personal property regardless of the manner by which the transfer is accomplished.

(B) When a retailer is also acting as a wholesaler or distributor, the duty to report and pay the tax imposed by this subchapter arises when the property is transferred to a retail store for sale to the ultimate consumer, as reflected by the records of the taxpayer;

(13) "Simple syrup" means a mixture of sugar and water;

(14)(A) "Soft drink" means any nonalcoholic beverage sold for human consumption including, but not limited to, the following:

(i) Soda water;

(ii) Ginger ale;

(iii) All drinks commonly referred to as "cola";

(iv) Lime, lemon, lemon-lime, and other flavored drinks, whether naturally or artificially flavored, including any fruit or vegetable drink containing ten percent (10%) or less natural fruit juice or natural vegetable juice; and

(v) All other drinks and beverages commonly referred to as "soft drinks".

(B) "Soft drink" does not include coffee or tea unless the coffee or tea is bottled as a liquid for sale; and

(15) "Syrup" means the liquid mixture of basic ingredients used in making, mixing, or compounding soft drinks by mixing the syrup with water, simple syrup, ice, fruits, vegetables, fruit juice, vegetable juice, or any other product suitable to make a complete soft drink.

History. Acts 1992 (2nd Ex. Sess.), No. 7, § 2.

26-57-903. Administration.

This subchapter is to be administered in all respects in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq., unless otherwise provided.

History. Acts 1992 (2nd Ex. Sess.), No. 7, § 1.

CASE NOTES

Applicability.

All Arkansas licensed soft drink distributors, as the parties or sellers responsible for collecting the tax, have the option of (1) including the tax in the cost of the

product or (2) separately stating the tax on the invoice or document of sale. *Fox-smith, Inc. v. Coca-Cola Bottling Co.*, 323 Ark. 13, 912 S.W.2d 923 (1996).

26-57-904. Tax rate.

(a) There is hereby levied and there shall be collected a tax upon every distributor, manufacturer, or wholesale dealer, to be calculated as follows:

(1) Two dollars (\$2.00) per gallon for each gallon of soft drink syrup or simple syrup sold or offered for sale in the State of Arkansas;

(2) Twenty-one cents (21¢) per gallon for each gallon of bottled soft drinks sold or offered for sale in the State of Arkansas;

(3)(A) When a package or container of powder or other base product, other than a syrup or simple syrup, is sold or offered for sale in Arkansas, and the powder is for the purpose of producing a liquid soft drink, then the tax on the sale of each package or container shall be equal to twenty-one cents (21¢) for each gallon of soft drink which may be produced from each package or container by following the manufacturer's directions.

(B) This tax applies when the sale of the powder or other base is sold to a retailer for sale to the ultimate consumer after the liquid soft drink is produced by the retailer.

(b)(1) Any retailer or retail dealer who purchases bottled soft drinks, soft drink syrup, simple syrup, powder, or base product from an unlicensed distributor, manufacturer, or wholesale dealer shall be liable for the tax levied in subsection (a) of this section on those purchases.

(2) A retailer shall not be subject to this tax if the retailer purchases syrups, simple syrups, powders or base products, or soft drinks from a supplier licensed under § 26-57-909.

History. Acts 1992 (2nd Ex. Sess.), No. 7, §§ 4, 5.

CASE NOTES

ANALYSIS

Constitutionality.

In General.

Applicability.

Retailers Subject to Tax.

Constitutionality.

A retail dealer of soft drinks had standing to challenge the constitutionality of this section as an illegal exaction, notwithstanding that the tax imposed by the statute only applies to distributors, manufacturers, and wholesale dealers, because it had paid and would continue to pay the full amount of the tax, which its distributor passed on to it in a separately itemized charge on its sales invoices. *Ghegan & Ghegan, Inc. v. Weiss*, 338 Ark. 9, 991 S.W.2d 536 (1999).

In General.

The tax imposed by this section is one on products, not individuals. *Ghegan & Ghegan, Inc. v. Barclay*, 345 Ark. 514, 49 S.W.3d 652 (2001).

It is clear from the context of §§ 26-57-901 and this section that two different

products are taxed: this section specifically distinguishes syrups from powders in its imposition of taxes. *Ghegan & Ghegan, Inc. v. Barclay*, 345 Ark. 514, 49 S.W.3d 652 (2001).

This chapter does not treat retailers — or the distributors, wholesalers, or manufacturers — differently; all are taxed the same. It is the product that is taxed differently. *Ghegan & Ghegan, Inc. v. Barclay*, 345 Ark. 514, 49 S.W.3d 652 (2001).

Applicability.

All Arkansas licensed soft drink distributors, as the parties or sellers responsible for collecting the tax, have the option of (1) including the tax in the cost of the product or (2) separately stating the tax on the invoice or document of sale. *Foxsmith, Inc. v. Coca-Cola Bottling Co.*, 323 Ark. 13, 912 S.W.2d 923 (1996).

Retailers Subject to Tax.

The one "subject to" the tax means the one who must file a monthly return and remit the tax to the state. *Foxsmith, Inc. v. Coca-Cola Bottling Co.*, 323 Ark. 13, 912 S.W.2d 923 (1996).

26-57-905. Exemptions.

The following shall be exempt from the tax levied by § 26-57-904:

(1) Syrups, simple syrups, powders or base products, or soft drinks sold to the United States Government;

(2) Syrups, simple syrups, powders or base products, or soft drinks exported from the State of Arkansas by a distributor, wholesaler, or manufacturer;

(3) Any powder or base product that is used in preparing coffee or tea;

(4) Any frozen concentrate or freeze-dried concentrate to which only water is added to produce a soft drink containing more than ten percent (10%) natural fruit juice or natural vegetable juice;

(5) Any soft drink containing more than ten percent (10%) natural fruit juice or natural vegetable juice;

(6) Syrups, simple syrups, powders or base products, or soft drinks sold by one (1) distributor, wholesaler, or manufacturer to another distributor, wholesaler, or manufacturer who holds a license issued by the Director of the Department of Finance and Administration under the provisions of § 26-57-909 as a distributor, wholesaler, or manufacturer, provided that the license number of the distributor, wholesaler, or manufacturer to whom the soft drink is sold is clearly shown on the

invoice for the sale which is claimed to be exempt. This exemption shall not apply to any sale to a retailer;

(7) Any product whether sold in liquid or powder form which is intended by the manufacturer for consumption by infants and which is commonly referred to as "infant formula";

(8) Any product whether sold in liquid or powder form which is intended by the manufacturer for use as a dietary supplement or for weight reduction;

(9) Water to which no flavoring, whether artificial or natural, or carbonation has been added;

(10) Any powder or other base product which is intended by the manufacturer to be sold and used for the purpose of domestically mixing soft drinks by the ultimate consumer; and

(11) Any product containing milk or milk products.

History. Acts 1992 (2nd Ex. Sess.), No. 7, § 6.

26-57-906. Tax reporting.

(a)(1) The tax levied by § 26-57-904 shall be paid by the distributor, wholesaler, or manufacturer when the syrup, powder or base product, or soft drink is sold.

(2) The tax levied by § 26-57-904 shall be paid by a retailer who purchases syrups, powder or base products, or soft drinks from an unlicensed distributor, wholesaler, or manufacturer.

(b) The distributor, wholesaler, or manufacturer and any retailer subject to this tax shall file a monthly return and remit the tax for the month to the Director of the Department of Finance and Administration on or before the fifteenth day of the month next following the month in which the sale or purchase was made.

(c)(1) The returns shall be made upon forms prescribed and furnished by the director and signed by the person required to collect and remit the tax or the person's agent.

(2) The return shall contain such information as the director shall require for the proper administration of this subchapter.

History. Acts 1992 (2nd Ex. Sess.), No. 7, § 7.

CASE NOTES

Retailers Subject to Tax.

The one "subject to" the tax means the one who must file a monthly return and

remit the tax to the state. Foxsmith, Inc. v. Coca-Cola Bottling Co., 323 Ark. 13, 912 S.W.2d 923 (1996).

26-57-907. Tax rate.

(a) If a distributor, manufacturer, or wholesale dealer sells bottled soft drinks, soft drink syrups, powders, or base products to retailers or retail dealers located in a city or incorporated town which is subject to

the border city tax rate provided in § 26-52-303, then the tax shall be at the same rate as imposed by the adjoining state on distributors, manufacturers, or wholesale dealers, not to exceed the rate imposed by § 26-57-904.

(b) If a retailer or retail dealer is located in a city or incorporated town which is subject to the border city tax rate provided by § 26-52-303 and the retailer or retail dealer purchases bottled soft drinks, soft drink syrup, powder, or base products from an unlicensed distributor, manufacturer, or wholesale dealer, then the tax imposed by § 26-57-904 shall be at the same rate imposed by the adjoining state, not to exceed the rate imposed by § 26-57-904.

History. Acts 1992 (2nd Ex. Sess.), No. 7, § 8.

CASE NOTES

Cited: Ghegan & Ghegan, Inc. v. Barclay, 345 Ark. 514, 49 S.W.3d 652 (2001).

26-57-908. Disposition of revenues.

The revenues derived from the tax collected under this subchapter shall be remitted to the Treasurer of State, who shall deposit the revenues as trust funds into the State Treasury and shall credit the proceeds to the trust fund known as the Arkansas Medicaid Program Trust Fund.

History. Acts 1992 (2nd Ex. Sess.), No. 7, § 9; 1993, No. 1073, § 20; 1994 (2nd Ex. Sess.), No. 27, § 2.

26-57-909. Licenses.

(a) All distributors, wholesalers, or manufacturers of soft drinks, whether located within or without the State of Arkansas, who sell or offer syrups, simple syrups, powders, or base products, or soft drinks for sale to retail dealers within the State of Arkansas shall obtain a license for the privilege of conducting such business within Arkansas from the Director of the Department of Finance and Administration.

(b) Any retailer who purchases syrups, simple syrups, powders, or base products, or soft drinks from an unlicensed manufacturer, wholesaler, or distributor shall obtain a license for the privilege of conducting such business from the director.

(c) Any person required to obtain a license under this subchapter shall obtain a license for each place of business owned or operated by the person.

(d) The license shall be conspicuously displayed at the place of business for which it was issued.

History. Acts 1992 (2nd Ex. Sess.), No. 7, § 3.

SUBCHAPTER 10 — VENDING DEVICES SALES TAX

SECTION.

- 26-57-1001. Definitions.
- 26-57-1002. Registration — Records — Amount of tax.
- 26-57-1003. Election not to register.
- 26-57-1004. Identification of taxpayer — Presumption of nonpayment.

SECTION.

- 26-57-1005. Disposition of revenues.
- 26-57-1006 — 26-57-1017. [Repealed.]

A.C.R.C. Notes. The repeal of former § 26-57-1003 by Acts 1995, No. 934 was deemed to supersede its amendment by Acts 1995, No. 1160. Former § 26-57-1003(1) was amended by Acts 1995, No. 1160 to read as follows: “(1) ‘Person’ means any individual, partnership, limited liability company, association, or corporation.”

Publisher’s Notes. Former subchapter 10, concerning the Vending Devices Decal Act of 1993, was repealed by Acts 1995, No. 934, § 5. The former subchapter was derived from the following sources:

- 26-57-1001. Acts 1993, No. 1037, § 1.
- 26-57-1002. Acts 1993, No. 1037, § 15.
- 26-57-1003. Acts 1993, No. 1037, § 2; 1995, No. 1160, § 38.
- 26-57-1004. Acts 1993, No. 1037, § 4.
- 26-57-1005. Acts 1993, No. 1037, § 10.
- 26-57-1006. Acts 1993, No. 1037, § 3.
- 26-57-1007. Acts 1993, No. 1037, §§ 6, 11.
- 26-57-1008. Acts 1993, No. 1037, § 5.
- 26-57-1009. Acts 1993, No. 1037, §§ 7, 8.
- 26-57-1010. Acts 1993, No. 1037, § 9.
- 26-57-1011. Acts 1993, No. 1233, § 2.
- 26-57-1012. Acts 1993, No. 1233, § 2.
- 26-57-1013. Acts 1993, No. 1233, § 2.
- 26-57-1014. Acts 1993, No. 1233, § 2.
- 26-57-1015. Acts 1993, No. 1233, § 2.
- 26-57-1016. Acts 1993, No. 1233, § 2.
- 26-57-1017. Acts 1993, No. 1233, § 2.

Cross References. Vending devices, § 26-57-1201 et seq.

Effective Dates. Acts 1995, No. 934, § 10: July 1, 1995. Emergency clause provided: “It is hereby found and determined

that the Vending Devices Decal Act of 1993 will expire on June 30, 1995 and that it is necessary to provide for the payment of taxes on tangible personal property sold through vending devices after June 30, 1995 and this Act provides a fair and equitable method for collecting taxes on tangible personal property sold through vending devices after that date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995.”

Acts 2003 (2nd Ex. Sess.), No. 107, § 8: July 1, 2004. The amendment was effective by its own terms on July 1, 2004.

Acts 2003 (2nd Ex. Sess.), No. 107, § 12: became law without Governor’s signature, Mar. 1, 2004. Emergency clause provided: “It is found and determined by the General Assembly, that the provision of an equal opportunity for an adequate education to all the citizens of the state is imperative; that additional funds are immediately needed to provide an equal opportunity for an adequate education; that this act is designed to provide the additional revenues needed to provide this equal opportunity to all citizens; and that a delay in the effective date of this act will cause irreparable harm upon the provision of essential education opportunities and the proper administration of educational programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of March 1, 2004.”

26-57-1001. Definitions.

As used in this subchapter:

(1) "Director" means the Director of the Department of Finance and Administration or his or her authorized agents;

(2) "Person" means any individual, partnership, corporation, limited liability corporation, association, organization, or nonprofit corporation, and any county or municipal subdivision of this state;

(3)(A) "Vending device" means any machine or manual device which dispenses tangible personal property after a coin or thing of value is inserted.

(B) "Vending device" does not include devices used exclusively for the purpose of selling cigarettes, newspapers, magazines, or postage stamps; and

(4) "Vending device operator" means any person who sells tangible personal property through vending devices, and who elects to pay the taxes imposed by § 26-57-1002.

History. Acts 1995, No. 934, § 1.

26-57-1002. Registration — Records — Amount of tax.

(a) Any person who sells tangible personal property through vending devices may elect to register with the Director of the Department of Finance and Administration as a vending device operator and pay the state and local sales and use taxes as provided in this section.

(b) Any person who elects to register as a vending device operator shall obtain a gross receipts tax permit from the director as provided in § 26-52-201 et seq.

(c)(1) All tangible personal property purchased by a vending device operator for resale through a vending device shall be purchased exempt from the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and any local sales and use taxes pursuant to the sale for resale exemption provided for in § 26-52-401(12).

(2) The vending device operator shall maintain suitable records reflecting all purchases of tangible personal property during each calendar month for resale through a vending device.

(d)(1)(A)(i) A tax of four and one-half percent (4½%) is levied on the purchase price of all tangible personal property purchased or withdrawn from inventory during each calendar month by a vending device operator for resale through a vending device.

(ii)(a) An additional tax of one and one-half percent (1½%) is levied on the purchase price of all tangible personal property purchased or withdrawn from inventory during each calendar month by a vending device operator for resale through a vending device.

(b) The additional tax levied under subdivision (d)(1)(A)(ii)(a) of this section shall be special revenue and credited to the Educational Adequacy Fund.

(B) The taxes levied in subdivision (d)(1)(A) of this section shall be in lieu of any state gross receipts tax on the gross receipts or gross proceeds derived from the sale of the tangible personal property by the vending device operator through a vending device.

(2)(A) An additional tax of one percent (1%) is levied on the purchase price of all tangible personal property purchased or withdrawn from inventory during each calendar month for resale through a vending device.

(B) This tax shall be in lieu of any local gross receipts taxes imposed by any city or county of this state on the gross receipts or gross proceeds derived from the sale of the property by the vending device operator through a vending device.

(e) The taxes levied by subsection (d) of this section shall be reported and paid in the same manner and at the same time as prescribed by law for the reporting and payment of the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(f) When calculating the taxes due under this section, a vending device operator shall be allowed to deduct any manufacturer's rebates received which lower the final purchase price paid by the vending device operator for tangible personal property sold through a vending device.

(g) Any vending device operator who manufactures the product which is withdrawn from stock for sale through a vending device shall calculate the tax due by multiplying the tax rate set out in subsection (d) of this section by the selling price for which the person would sell the product to another vending device operator for resale through a vending device.

History. Acts 1995, No. 934, § 2; 2003 (2nd Ex. Sess.), No. 107, § 8.

Amendments. The 2003 (2nd Ex. Sess.) amendment added (d)(1)(A)(ii); and substituted "The taxes levied in subdivi-

sion (d)(1)(A) of this section" for "This tax" in (d)(1)(B).

Effective Dates. Acts 2003 (2nd Ex. Sess.), No. 107, § 8: amendment effective by its own terms on July 1, 2004.

26-57-1003. Election not to register.

(a) Any person selling tangible personal property through a vending device, and who elects not to register as a vending device operator, shall:

(1) Surrender any gross receipts tax permits issued by the Director of the Department of Finance and Administration, unless the permit is needed to report taxable sales other than sales through a vending device; and

(2)(A) Pay the Arkansas gross receipts tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., the Arkansas compensating use tax under the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and any applicable local sales and use taxes to the person's vendor on all purchases of tangible personal property purchased for resale through a vending device.

(B)(i) The sale for resale exemption provided in § 26-52-401(12) shall not apply to purchases of tangible personal property for resale through vending devices unless the purchaser is registered with the director as a vending device operator.

(ii) However, any person not registered as a vending device operator who maintains property in inventory for subsequent resale on which the state and local sales and use taxes have not been paid, and who subsequently withdraws that property from inventory for sale through a vending device, shall report and pay the state and local sales and use taxes on the person's purchase price of such property withdrawn from inventory.

(b) Any person selling property through vending devices who has paid the state and local sales and use taxes in the manner provided by this section shall not be required to collect and remit state or local sales tax on sales of tangible personal property through the vending device.

(c) Any person who elects to pay tax on tangible personal property sold through vending devices in accordance with the provisions of this section and who manufactures the product which is withdrawn from stock for resale through a vending device shall pay the taxes due under this section by multiplying the tax rate by the selling price for which the person would sell the product to another for resale through a vending device.

History. Acts 1995, No. 934, § 3, 5.

26-57-1004. Identification of taxpayer — Presumption of non-payment.

(a) All persons who sell tangible personal property through vending devices shall affix the name and identification number, if any, of the person responsible for the payment of the taxes imposed by §§ 26-57-1002 and 26-57-1003.

(b)(1)(A) If any vending device does not have the information required by subsection (a) of this section affixed thereto, there shall be a presumption that the taxes imposed by this subchapter have not been paid.

(B) The Director of the Department of Finance and Administration shall seal any vending device subject to this presumption in such a manner as to prevent any further sales through the vending device and shall assess and collect a penalty of fifty dollars (\$50.00) per vending device against the person selling tangible personal property through the vending device.

(2) The presumption in subdivision (b)(1) of this section shall be overcome if the person selling property through the vending device affixes the information required by this section to the vending device and proves that the taxes imposed by §§ 26-57-1002 and 26-57-1003 have been paid.

History. Acts 1995, No. 934, § 6.

26-57-1005. Disposition of revenues.

- (a) The revenues derived from § 26-57-1002(d)(1) shall be general revenues and shall be deposited into the State Treasury in the same manner as the Arkansas gross receipts tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.
- (b) All revenues derived from § 26-57-1002(d)(2) shall be deposited by the Treasurer of State into the Identification Pending Trust Fund for Local Sales and Use Taxes in accordance with the provisions of §§ 26-74-221 and 26-75-223, and all revenues deposited into that fund shall be distributed to the cities and counties of this state in accordance with the provisions of §§ 26-74-221(a)(2)(C)(ii) and 26-75-223(a)(2)(C)(ii).

History. Acts 1995, No. 934, § 4.

26-57-1006 — 26-57-1017. [Repealed.]

Publisher’s Notes. As to the repeal of these sections, see Publisher’s Notes at the beginning of this subchapter.

SUBCHAPTER 11 — TAX ON TOBACCO PRODUCTS TO FUND BREAST CANCER CONTROL AND RESEARCH

SECTION.	SECTION.
26-57-1101. Additional tax — Cigarettes.	control — Allocation of
26-57-1102. Additional tax — Tobacco products other than cigarettes.	moneys.
26-57-1103. Deposit of general revenues.	26-57-1107. Regulations.
26-57-1104. Reporting and remittance.	26-57-1108. Appropriation from general revenue fund — Additional tax not collected.
26-57-1105. Applicability.	
26-57-1106. Distribution of funds for breast cancer research and	

Cross References. Breast cancer control, § 20-15-1301 et seq.

Effective Dates. Acts 1997, No. 434, § 18: July 1, 1997. Emergency clause provided: “It is hereby found and determined that cancer is a leading cause of death among Arkansans; that, of cancer deaths, breast cancer claims more lives of women than any other type except lung cancer; that there are nineteen hundred (1900) new cases of breast cancer diagnosed each year; that breast cancer mortality rates have increased in Arkansas in recent years; that presently breast cancer is claiming the lives of over four hundred seventy (470) women in Arkansas each

year; that this number of deaths will increase as our population grows older; that information barriers result in women being unaware of the risk of breast cancer or the value of early detection; that financial barriers prevent some women from taking advantage of mammography; and that there is a lack of funding for breast cancer research in the state; it is further found and determined that to reduce the number of lives continuing to be needlessly lost, it is necessary to increase the state tax on cigarettes and tobacco products to provide funding for breast cancer, to provide for screening, diagnostic, and treatment services for women at risk of devel-

oping breast cancer and to assure continuing research with respect to the cause, cure and prevention of breast cancer. This act will provide greatly needed revenues to fund essential research and services with respect to the cause, cure, detection and prevention of breast cancer, and breast cancer education in the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1997."

Acts 2001, No. 1669, § 38: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2001 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2001 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2001."

Acts 2001, No. 1698, § 4: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly that changes in distributions and funding sources must take place at the beginning of the state fiscal year in order to maintain approved accounting standards and to reduced confusion and that in the event of an extended session, this act may not take effect until after July 1 thereby placing the funding of the breast cancer program

in jeopardy. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001."

Acts 2005, No. 2219, § 2: July 1, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Rx Program created by the Eighty-fifth General Assembly will provide reduced price prescription medicine to many medically needy Arkansans; that the program is in immediate need of start-up funding for the administration and organization of the program; and that it is necessary for this act to become effective on July 1, 2005, in order for the program to begin benefiting needy Arkansans and to meet the state fiscal year budgeting requirements. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005."

Acts 2007, No. 1236, § 20: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2007 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2007 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2007."

26-57-1101. Additional tax — Cigarettes.

(a) In addition to the excise or privilege taxes levied under §§ 26-57-208 and 26-57-802, there is hereby levied a tax of one dollar twenty-five cents (\$1.25) per one thousand (1000) cigarettes sold in the state.

(b) As provided in § 26-57-244, the Director of the Department of Finance and Administration may make a direct assessment of excise tax against any person in possession of unstamped cigarettes.

History. Acts 1997, No. 434, § 5; 2007, No. 817, § 7.

Amendments. The 2007 amendment added (b) and made a related change.

26-57-1102. Additional tax — Tobacco products other than cigarettes.

(a)(1) In addition to the tax imposed by § 26-57-208(2), there is imposed an additional excise or privilege tax on tobacco products other than cigarettes on the first sale to wholesalers or retailers within the state at two percent (2%) of the manufacturer's selling price.

(2) The tax shall be computed on the actual manufacturer's invoice price before discounts and deals.

(b)(1)(A) The taxes levied by this section and § 26-57-1101 shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(B) However, retailers shall be liable for reporting and paying these taxes when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(2)(A) Any taxpayer who fails to report and remit the tobacco tax due on tobacco products purchased from manufacturers, distributors, or wholesalers who are not licensed under § 26-57-214 shall be subject to the following penalties:

(i) Five percent (5%) of the total tobacco tax due for the first offense;

(ii) Twenty percent (20%) of the total tobacco tax due for the second offense; and

(iii) Twenty-five percent (25%) of the total tobacco tax due for the third and any subsequent offenses.

(B) In addition, the taxpayer's retail cigarette/tobacco permit shall be revoked for a period of ninety (90) days for the third and any subsequent offenses.

(3) The provisions of this subsection shall not affect the provisions of § 26-57-228.

(c) As provided in § 26-57-244, the Director of the Department of Finance and Administration may make a direct assessment of excise tax against any person in possession of untaxed tobacco products.

History. Acts 1997, No. 434, § 6; 1999, No. 1246, § 6; 2007, No. 817, § 8.

Amendments. The 2007 amendment added (c).

26-57-1103. Deposit of general revenues.

Notwithstanding Acts 2001 (1st Ex. Sess.), No. 2, § 11, beginning July 1, 2005, twenty-nine percent (29%) of all moneys collected from the additional tax levied in §§ 26-57-1101 and 26-57-1102 shall be depos-

ited into the State Treasury as special revenue and distributed as follows:

(1) Twenty-five percent (25%) shall be credited to the University of Arkansas Medical Center Fund;

(2) Eight and one-third percent ($8\frac{1}{3}\%$) shall be credited to the Breast Cancer Control Fund;

(3) Eight and one-third percent ($8\frac{1}{3}\%$) shall be credited to the Breast Cancer Research Fund;

(4) Eight and one-third percent ($8\frac{1}{3}\%$) shall be credited to the Miscellaneous Agencies Fund Account for the Arkansas Prostate Cancer Foundation; and

(5) Fifty percent (50%) shall be credited to the Aging and Adult Services Fund Account of the Department of Human Services Fund to be used to assist the Meals on Wheels Program.

History. Acts 1997, No. 434, § 9; 2001, No. 1669, § 33; 2001, No. 1698, § 2; 2005, No. 2219, § 1; 2007, No. 1236, § 17.

Amendments. The 2005 amendment rewrote this section.

The 2007 amendment, in present (1), substituted "Twenty" for "Except as pro-

vided in subsection (b) of this section, twenty" and substituted "University of Arkansas Medical Center Fund" for "Arkansas Rx Program Fund"; and deleted former (b).

26-57-1104. Reporting and remittance.

The additional taxes levied in §§ 26-57-1101 and 26-57-1102 shall be reported and remitted in the same manner and at the same time as other taxes levied on cigarettes in the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

History. Acts 1997, No. 434, § 10.

26-57-1105. Applicability.

The tax levied in §§ 26-57-1101 and 26-57-1102 shall be in effect on and after July 1, 1997 and shall apply to any inventory or stocks of cigarettes or tobacco products held by a wholesaler or retailer on that date.

History. Acts 1997, No. 434, § 11.

26-57-1106. Distribution of funds for breast cancer research and control — Allocation of moneys.

(a) All remaining moneys collected from the additional tax levied in §§ 26-57-1101 and 26-57-1102 shall be deposited into the State Treasury as special revenues to be distributed as follows:

(1) Twenty percent (20%) shall be credited to the Breast Cancer Research Fund, which is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State to be used exclusively for the purposes set forth in § 20-15-1303; and

(2)(A) Eighty percent (80%) shall be credited to the Breast Cancer Control Fund, which is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State to be used exclusively for the purposes set forth in § 20-15-1304 and at the option of the Department of Health in an amount not to exceed the amount appropriated by the General Assembly for the purpose of cervical cancer control.

(B) The Director of the Department of Health shall be the disbursing officer for the Breast Cancer Control Fund, and the Chancellor of the University of Arkansas for Medical Sciences shall be the disbursing officer for the Breast Cancer Research Fund.

(b) The moneys in the Breast Cancer Research Fund are to be allocated to the Breast Cancer Research Program for the awarding of grants, chairs, and contracts to researchers for research with respect to the cause, cure, treatment, prevention, and earlier detection of breast cancer and for developing leadership in research in Arkansas.

(c)(1) The moneys in the Breast Cancer Control Fund for the control of breast cancer are to be allocated according to the recommendations of the Breast Cancer Control Advisory Board, which shall establish the scope of services of the program and programmatic priorities based on the analysis of available information.

(2) The board shall also be responsible for developing eligibility criteria to be applied in evaluating requests for breast cancer control financial assistance from screened women who are found to be in need of diagnostic and treatment services.

(3) The board shall also review contractual agreements for breast cancer control with providers who will be rendering services through the program.

History. Acts 1997, No. 434, § 12; 2001, No. 1669, § 34; 2001, No. 1698, § 3.

Amendments. The 2001 amendment by identical act Nos. 1669 and 1698 substituted "All remaining" for "Ninety percent (90%) of all" in the introductory language of (a); substituted "the Treasurer of State, Auditor of State and" for "the State Treasurer, State Auditor and" in (a)(1) and

(a)(2); substituted " § 20-15-1303" for " § 20-15-303" in (a)(1); substituted " § 20-15-1304 and, at ... cervical cancer control" for " § 20-15-304" in (a)(2); in (c), inserted "for the control of breast cancer," deleted "advisory" preceding "board shall," and inserted "for breast cancer control"; subdivided (c); and made minor stylistic changes throughout.

26-57-1107. Regulations.

The Department of Finance and Administration is hereby authorized to promulgate regulations as necessary to implement the tax provisions of this subchapter.

History. Acts 1997, No. 434, § 13.

26-57-1108. Appropriation from general revenue fund — Additional tax not collected.

(a) The taxes levied by this subchapter shall not be collected during any fiscal year for which the General Assembly has appropriated at least eight hundred thousand dollars (\$800,000) from general revenues to the Breast Cancer Research Fund and at least three million two hundred thousand dollars (\$3,200,000) of general revenues to the Breast Cancer Control Fund and funded those appropriations in Category A of the Revenue Stabilization Law, § 19-5-101 et seq., for that fiscal year.

(b) The commission authorized by § 26-57-236(g) shall be at the rate of three and eight-tenths percent (3.8%) during any fiscal year for which the General Assembly has appropriated at least eight hundred thousand dollars (\$800,000) from general revenues to the Breast Cancer Research Fund and at least three million two hundred thousand dollars (\$3,200,000) of general revenues to the Breast Cancer Control Fund and funded those appropriations in Category A of the Revenue Stabilization Law, § 19-5-101 et seq., for that fiscal year, otherwise the commission shall be as prescribed in § 26-57-236(g).

History. Acts 1997, No. 434, § 14.

SUBCHAPTER 12 — VENDING DEVICES DECAL ACT OF 1997

SECTION.

- 26-57-1201. Title.
- 26-57-1202. Administration of law.
- 26-57-1203. Definitions.
- 26-57-1204. Application, issuance, and display of decal.
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- 26-57-1208. Distribution of revenue.
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SECTION.

- 26-57-1210. Prohibited devices not legalized — Fees not refunded.
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- 26-57-1212. Procedure upon forfeiture.
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- 26-57-1214. Disposition of forfeiture sale proceeds.
- 26-57-1215. Forfeiture includes cash contents.
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- 26-57-1217. Purpose.

Cross References. Vending and amusement machines, § 26-77-301 et seq.
Vending devices sales tax, § 26-57-1001 et seq.

Effective Dates. Acts 1997, No. 928, § 21: Jan. 1, 1998. Emergency clause provided: "It is hereby found by the General Assembly: (1) that it is impractical for the persons who are operators of vending devices, as defined by this Vending Devices

Decal Act, to collect the state and local Gross Receipts (Sales) Taxes on the gross proceeds or gross receipts they realize from the sale of goods and services made through vending devices, inasmuch as such vendors do not deal in person with their customers at the point of sale; (2) that mechanical limitations on such vending devices dictate that prices for goods or services dispensed by these devices be

adjusted in increments of five cents (\$.05); (3) that the Sales Taxes imposed upon the sales made by vending devices must be borne by the persons who are the operators of such vending devices from the gross proceeds or gross receipts received for such sales (where other vendors are able to collect such state and local Gross Receipts (Sales) Taxes from their customers in addition to the gross receipts or gross proceeds they receive from their customer for the sale of similar goods and services as those sold by vending devices); (4) that the General Assembly finds this situation is unfair and discriminatory to the persons who are the operators of such vending devices; (5) that the states surrounding Arkansas have all recognized this specific problem imposed upon sales made by vending devices and have each provided some form of legislative relief for the persons who are operators of vending devices from their states' respective Sales Tax laws; (6) that a record was established under the prior Vending Device Decal Act that certain operators of vending devices were forced to be covered by paying the decal fee, when such operators preferred another method of taxation; (7) that it has been established that there was once a serious problem of compliance and accountability in this state with the payment of Sales Taxes on sales made by vending devices, due to the cash nature of such sales without receipts being prepared; and (8) that it being the intent of the General Assembly to place all persons

who are operators of vending devices that elected to pay their taxes by way of this simplified vending device decal fee system (in lieu of paying the general state and local Gross Receipts (Sales) Taxes or special Vending Devices Sales Taxes) on the same competitive planes. Therefore an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect as of January 1, 1998."

Acts 2003 (2nd Ex. Sess.), No. 107, § 9: July 1, 2004. The amendment was effective by its own terms on July 1, 2004.

Acts 2003 (2nd Ex. Sess.), No. 107, § 12: became law without Governor's signature, Mar. 1, 2004. Emergency clause provided: "It is found and determined by the General Assembly, that the provision of an equal opportunity for an adequate education to all the citizens of the state is imperative; that additional funds are immediately needed to provide an equal opportunity for an adequate education; that this act is designed to provide the additional revenues needed to provide this equal opportunity to all citizens; and that a delay in the effective date of this act will cause irreparable harm upon the provision of essential education opportunities and the proper administration of educational programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of March 1, 2004."

26-57-1201. Title.

This subchapter shall be known and cited as the "Vending Devices Decal Act of 1997".

History. Acts 1997, No. 928, § 1.

26-57-1202. Administration of law.

The provisions of this subchapter will be subject to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., as those provisions shall apply to the administration of this subchapter by the Director of the Department of Finance and Administration.

History. Acts 1997, No. 928, § 2.

26-57-1203. Definitions.

As used in this subchapter:

(1)(A) "Coin-operated bulk vending device" means machines or devices containing unsorted merchandise which upon insertion of a coin or coins dispenses the merchandise in approximately equal portions, at random and without selection by the customer.

(B) Such vending machine is a simple mechanical device capable of accepting a coin of only one (1) denomination with one (1) coin slot.

(C) Sorted or unsorted merchandise dispensed by such vending machines include gum, candy, toys, novelties, sanitary napkins, or other similar merchandise;

(2)(A) "Coin-operated manually powered vending device" means any and all machines or devices that:

(i) Use manual power rather than electromotive power for dispensing products; and

(ii) Upon payment or insertion of coins, tokens, or similar objects, dispense the type of tangible personal property described in subdivision (4)(A) of this section.

(B) "Coin-operated manually powered vending device" is intended to include:

(i) Coin-operated manually-powered vending devices that have one (1) or more coin slots as long as such dispensing devices are housed in one (1) cabinet; and

(ii) Manually powered devices that dispense prophylactics;

(C) "Coin-operated manually-powered vending device" is not intended to refer to a coin-operated bulk vending device, which term itself is otherwise defined by this section.

(3) "Coin-operated tabletop snack vending device" means any and all machines or devices without refrigeration capabilities that:

(A) Sit upon a counter, tabletop, or stand and provide for eighteen (18) selections, or less; and

(B) Upon the payment or insertion of a coin, token or similar object, dispenses tangible personal property, including candies, gum, chips, cookies, crackers or other edible snacks, but not cold drinks, hot drinks, or sandwiches;

(4)(A) "Coin-operated vending device" means any and all machines or devices which, upon the payment or insertion of a coin, token or similar object, dispense tangible personal property, including, but not limited to, candies, gum, cold drinks, hot drinks, sandwiches, chips, ballpoint pens, combs, cigarette lighters, soaps or detergents, or other edible or inedible items.

(B) "Coin-operated vending device" does not mean:

(i) Amusement and game machines;

(ii) Devices used exclusively for the purpose of selling cigarettes, newspapers, magazines or postage stamps; or

(iii) Devices used for the purpose of selling services such as pay telephone booths, parking meters, gas and electric meters, automatic

teller machines, compressed air, or other devices used in the distribution of such needed services;

(5) "Decal registration year" or "decal fee year" means the period that begins on July 1 of a given year, and expires on June 30 of the following year, during which a vending device decal as required by this subchapter must be purchased and affixed to all vending devices operating within the state;

(6) "Operator" means the person who as owner, lessee, bailee, or otherwise is responsible for removing money from the vending device and who is the person who would otherwise be responsible for reporting and paying the applicable gross receipts sales taxes on sales made through the vending device.

(7) "Owner" means the person who is the owner of any vending device.

(8) "Person" means any individual, partnership, association, or corporation; and

(9) "Vending device" means a:

- (A) Coin-operated vending device;
- (B) Coin-operated bulk vending device;
- (C) Coin-operated manually powered vending device; and
- (D) Coin-operated tabletop snack vending devices.

History. Acts 1997, No. 928, § 3.

26-57-1204. Application, issuance, and display of decal.

(a)(1) Any person who is the operator of a vending device in this state that is made available for use and operation by the general public whether the operator is the owner of such vending device, or a lessee, renter, bailee, etc. of the owner of such vending device in lieu of paying sales taxes under the provisions of the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or under the provisions of § 26-57-1001, et seq., may elect to pay the decal fees provided by § 26-57-1206.

(2) If such election is not made by the operator, then the general or special sales taxes that are otherwise applicable to the operation of the vending device shall be imposed upon the sale of tangible personal property from such vending device.

(b) The operator of a vending device who makes the election to pay the decal fees provided by this subchapter shall be responsible for applying to the Director of the Department of Finance and Administration for the issuance of an annual or special vending device decal for such vending device and at the same time shall pay to the director the annual or special vending device decal fee provided for by this subchapter, before such vending device is made available for use and operation by the general public.

(c) The director, upon receipt of full payment of the applicable decal fee, and upon approval of such application, shall issue to the person making such application an annual or special vending device decal for

the type of vending device or devices covered by such application and payment.

(d)(1) The annual or special vending device decals, and the application provided for herein shall be in such form as prescribed by the director. These decals and applications shall contain on their faces such information and descriptions as shall be required by regulations adopted by the director to properly and reasonably implement the provisions of this subchapter.

(2) Any number of vending devices may be included in one (1) application, but all vending devices operated by the applying operator must be made subject to this alternative decal fee. Such operator may not choose to have part of his or her vending devices covered by the decal fee provided by this subchapter, while other vending devices operated by the same operator during the decal registration year would be subject to the general or special sales taxes that would be otherwise applicable to the sale of tangible personal property from such vending devices.

(e) Before any vending device is put into operation or placed where the vending device may be used or operated by any member of the general public, and at all times when the vending device is being used or operated or made available to members of the general public for use or operation, an annual or special vending device decal shall be firmly affixed to the vending device covered thereby by the person who is the operator of the vending device so that the decal shall be plainly visible to and readable by the members of the general public.

History. Acts 1997, No. 928, § 4.

26-57-1205. Requirements to obtain vending device decal.

To obtain an annual or special vending device decal so as to be able to operate a vending device in this state an applicant for such vending device decal shall comply with the following requirements. The applicant:

(1) Must not be a convicted felon or a corporation whose president or principal shareholders are convicted felons; and

(2) Must have obtained from the Director of the Department of Finance and Administration an Arkansas gross receipts tax permit.

History. Acts 1997, No. 928, § 5.

26-57-1206. Annual decal fee — Special decal — In lieu of sales tax.

(a)(1) Every person who is the operator of a vending device, who elects to have the operation of the vending device covered by the provisions of this subchapter, and who makes available to the general public for use and operation vending devices described in this subchapter shall pay to the Director of the Department of Finance and Administration for the benefit of the state and its municipalities and

counties the following annual vending device decal fee for each vending device before the vending device may be placed in service within the state for use by members of the public:

(A) For each coin-operated vending device requiring a coin or thing of value of twenty-five cents (25¢) or more for a sale, ninety-three dollars (\$93.00);

(B) For each coin-operated vending device requiring a coin or thing of value of less than twenty-five cents (25¢) for a sale, fifteen dollars (\$15.00);

(C) For each coin-operated bulk vending device requiring a coin or thing of value of more than twenty-five cents (25¢) for a sale, seven dollars and fifty cents (\$7.50);

(D) For each coin-operated bulk vending device requiring a coin or thing of value of twenty-five cents (25¢) or less for a sale, two dollars and fifty cents (\$2.50); and

(E) For each coin-operated manually powered vending device, coin-operated tabletop snack vending device, or other coin-operated manually powered vending device requiring a coin or thing of value of twenty-five cents (25¢) or more for a sale, thirty dollars (\$30.00).

(2)(A) After payment of the appropriate annual vending device decal fee, the annual vending device decal issued by the director shall bear on its face the year of its issue.

(B) The annual vending device decal must be affixed to each vending device in a place that is clearly visible to the user of the vending device before the vending device may be placed by the operator for public use or operation in this state.

(3) The annual vending device decal shall not be transferred from one (1) vending device to another, unless the person who is the operator of the vending device shall establish to the satisfaction of the director that the vending device to which the annual vending device decal is to be transferred is a vending device that is replacing the vending device to which the annual vending device decal was originally affixed.

(b) In those instances in which it is shown to the satisfaction of the director that a vending device upon which an annual vending device decal fee is otherwise due will be placed in service for use by members of the general public for a definite period of time that is less than one (1) year, such as when the vending device shall be placed for public use in connection with fairs, carnivals, and places of amusement that operate only during certain seasons of the year, the director shall issue for those vending devices a special vending device decal and collect a special vending device decal fee computed as follows:

(1) The special vending device decal may be issued for any number of thirty-day periods, less than a full year, and the special decal shall indicate on its face that it is a special decal, not an annual decal, and the special decal shall be for one (1) or more thirty-day periods, but the special decal state on its face the precise dates for which it has been issued and the special decal shall not be transferred from one (1) vending device to another;

(2) The special vending device decal fee shall be computed and paid by the person who is the operator of the vending device on the basis of one-fifth (1/5) of the annual vending device decal fee charged by this subchapter for the type of vending device operated, for each thirty-day period for which the special decal is issued; and

(3) In the event the vending device is made available to the public for a period beyond that for which the special vending device decal is issued, then a full year's fee and penalty, as set out in § 26-57-1206, shall be due on the vending device from the person who is the operator of the vending device.

(c)(1) The annual or special vending device decal fees required to be paid by subsections (a) and (b) of this section shall be paid by the person who is the operator of the vending device in lieu of the requirement that the person collect and remit the:

(A) State and local gross receipts or sales taxes levied pursuant to the provisions of the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., any provision of §§ 26-74-101 et seq. and 26-75-101 et seq., or any other provision of the Arkansas Code which provides for the levy of a local sales tax; or

(B) Special sales taxes levied pursuant to the provisions of § 26-57-1001 et seq.

(2) It is the intent of the General Assembly that gross proceeds or gross receipts shall not be subject to any state or local gross receipts or sales taxes imposed in this state when:

(A) The gross receipts or gross proceeds are received by a person who is the operator of a vending device from the sale of any item of tangible personal property through the vending device; and

(B) The annual or special vending device decal fee has been paid and the decal is affixed to the vending device.

(d) Any sales made by the operator of a coin-operated vending device that are made without the use of a vending device, for example, office coffee service, manual hot foods lines, catering events, and other similar sales, shall be subject to the state and local gross receipts or sales taxes levied pursuant to the provisions of the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., any provision of §§ 26-74-101 et seq. and 26-75-101 et seq., or any other provision of the Arkansas Code that provides for the levy of a local sales tax.

(e)(1) For all vending devices that the operator does not elect to have covered by the decal fee provided by this section, the operator of that vending device shall acquire from the director an identifying decal that the operator shall affix to the vending device in a prominent place so as to establish to the consuming public that the vending device is not covered by the provisions of this subchapter.

(2) By reasonable regulations the director shall establish the amount to be charged for an identifying decal and the amount shall not exceed the cost of producing the identifying decals.

(f) An operator who elects to pay tax at the wholesale level and which has been issued an identification number by the Department of Finance

and Administration as of March 31, 1997, shall be entitled to utilize that identification number for all vending devices owned by that operator.

History. Acts 1997, No. 928, § 6; 2003 (2nd Ex. Sess.), No. 107, § 9; 2005, No. 1962, § 115.

Amendments. The 2003 (2nd Ex. Sess.) amendment substituted “ninety-three dollars (\$93)” for “seventy dollars (\$70.00)” in (a)(1)(A).

The 2005 amendment, in (d), substituted “for example” for “e.g.,” “and other

similar sales” for “etc.,” and “ §§ 26-74-101 et seq. and 26-75-101 et seq.” for “Chapters 74 and 75 or Title 26.”

Effective Dates. Acts 2003 (2nd Ex. Sess.), No. 107, § 9: amendment effective by its own terms on July 1, 2004.

26-57-1207. Taxable year — Decal for remainder of year — First year payment option.

(a)(1) For the purpose of the annual or special vending device decal issued under § 26-57-1204, the decal fee year shall begin on the first day of July and end on the last day of the following June. This decal fee year shall be divided into two (2) halves.

(2) The Director of the Department of Finance and Administration shall in each instance issue annual vending device decals for the remainder of the decal year upon payment of the annual vending device decal fee on the basis of the full amount of the annual decal applied for between July 1 and December 31 of the decal fee year, and in return for the payment of an amount of one-half ($\frac{1}{2}$) of such annual vending device decal fee, for any such annual decal applied for between January 1 and June 30 of the decal fee year.

(b) For the first taxable year that the annual or special vending device decal fee is applicable, the person who is the operator of such vending devices that are subject to registration and payment of such decal fees shall register all such vending devices with the director, but for the first one-half year, after March 31, 1997, the operator shall pay one-half ($\frac{1}{2}$) of the decal fee for each such vending device on or before January 1, 1998. Thereafter, the entire annual or special vending device decal fee shall be due from the person who is the owner, lessor, renter, or operator of such vending devices on or before July 1 of the applicable taxable year.

History. Acts 1997, No. 928, § 7.

26-57-1208. Distribution of revenue.

(a)(1) It is declared to be the purpose of this subchapter to provide revenues for general governmental functions of the state and its counties and municipalities, in lieu of the state and local gross receipts or sales taxes or vending device sales taxes that would otherwise be due and owing from the person who is the operator of a vending device.

(2) For that purpose and to that end, it is expressly provided that the revenue derived by the Director of the Department of Finance and

Administration from the sale of annual or special vending device decal fees, including penalties, shall be deposited by the director into the State Treasury and credited as provided in subsection (b) of this section.

(b) The vending device decal fees imposed by § 26-57-1206 or any proportionate amount of the vending device decal fees shall be divided as follows:

(1) Eighty percent (80%) of the fees collected under § 26-57-1206(a)(1)(B)-(E) and sixty percent (60%) of the fees collected under § 26-57-1206(a)(1)(A) shall be deposited to the credit of the General Revenue Fund Account of the State Apportionment Fund provided by § 19-5-202;

(2) Twenty percent (20%) of the fees collected under § 26-57-1206(a)(1)(B)-(E) and fifteen percent (15%) of the fees collected under § 26-57-1206(a)(1)(A) shall be deposited by the Treasurer of State into the Identification Pending Trust Fund for Local Sales and Use Taxes in accordance with the provisions of §§ 26-74-221 and 26-75-223, and all revenues deposited into that fund shall be distributed to the cities and counties of this state in accordance with the provisions of §§ 26-74-221(a)(2)(C)(ii) and 26-75-223(a)(2)(C)(ii); and

(3) Twenty-five percent (25%) of the fees collected under § 26-57-1206(a)(1)(A) shall be special revenues deposited by the Treasurer of State to the credit of the Educational Adequacy Fund.

History. Acts 1997, No. 928, § 8; 2003 (2nd Ex. Sess.), No. 107, § 10.

Amendments. The 2003 (2nd Ex. Sess.) amendment added “as follows” to the end of the introductory language of (b); substituted “Eighty percent (80%) ... § 26-57-1206(a)(1)(A) shall be” for “With eighty percent (80%) of such amount be-

ing” in (b)(1); substituted “Twenty percent (20%) ... § 26-57-1206(a)(1)(A) shall be” for “With twenty percent (20%) of such amount being” in (b)(2); added (b)(3); and made related changes.

Effective Dates. Acts 2003 (2nd Ex. Sess.), No. 107, § 10: amendment effective by its own terms on July 1, 2004.

26-57-1209. Penalties.

(a)(1) Any person who is the operator of a vending device who places a vending device in use and operation, or in a place available to members of the general public for use and operation, without a valid and current annual or special vending device decal having been affixed thereto, as required by §§ 26-57-1204 and 26-57-1206, shall be liable for the decal fee on such vending device in the full amount of the applicable annual vending device decal fee, as levied by this subchapter, and such annual vending device decal fee shall be collected by the Director of the Department of Finance and Administration in accordance with the provisions of § 26-57-1204.

(2)(A) In addition to the annual vending device decal fee that is due on such vending device, the operator of the vending device who was responsible for failing to apply for and pay for the applicable annual vending device decal fee shall also be liable to pay the director a penalty which such person shall pay to the director and which the director shall assess against such person.

(B) The amounts of these penalties for failure to purchase and display the annual decal fee are to be paid by such operator, in addition to the applicable annual vending device decal fee, and such penalty shall be the larger of either twenty-five dollars (\$25.00) per vending device, or an amount equal to eight (8) times the annual vending decal fee applicable to each such vending device.

(b) Any person who is the operator of a vending device who places the vending device in operation in this state for use or operation by members of the general public without first attaching thereto either the annual or special vending device decal provided for herein shall be guilty of a Class C misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars (\$100) or by imprisonment in the county jail for a period not exceeding thirty (30) days, or by both such fine and imprisonment, as provided by §§ 5-4-201 and 5-4-401, for each such vending device found not to be in compliance with the requirements of this subchapter.

History. Acts 1997, No. 928, § 9.

26-57-1210. Prohibited devices not legalized — Fees not refunded.

(a) Nothing in this subchapter shall be construed to legalize any coin-operated video gambling device, slot machine, or other coin-operated gambling device that may be prohibited by any of the other statutes of this state.

(b) The Director of the Department of Finance and Administration may assume that any vending device described in any application made under this subchapter and for which an annual or special vending device decal fee is paid is lawful, and no claim for refund of any such annual or special vending device decal fee shall be allowed based upon the inability of the operator of such coin-operated device to operate such vending device because of any other applicable law of this state.

History. Acts 1997, No. 928, § 10.

26-57-1211. Vending devices without decal affixed — Seizure and forfeiture.

(a) When any vending device as defined in § 26-57-1203(9) is placed on location for retail sales to the members of the general public in the State of Arkansas, or, after having been placed on location in this state, such vending device is left on location without the required vending device decal affixed thereon as may otherwise be provided for by the laws of this state, the vending device, including all cash in the receptacle thereof, if any, shall be considered forfeited to the State of Arkansas because of the absence of the required vending device decal from such vending device.

(b) Such vending device may be seized and sealed on site at its location by the Director of the Department of Finance and Administra-

tion or his or her authorized agent, and such vending device shall not be removed from such location by any person until such vending device is released from seizure by the director or his or her authorized agent.

(c) Such vending device may be seized by any authorized agent of the director, or by any sheriff or other law enforcement officer of this state acting upon the request and at the direction of the director.

History. Acts 1997, No. 928, § 11.

26-57-1212. Procedure upon forfeiture.

(a) Upon the seizure of such vending device, the vending device shall forthwith be delivered, together with the cash, if any, contained in the receptacle of such vending device, to the Director of the Department of Finance and Administration.

(b) The director or his or her authorized agent shall then proceed to make an administrative determination of whether or not the vending device and cash, if any, that have been seized should in fact be forfeited to the State of Arkansas.

(c) The owner of the vending device shall be given at least thirty (30) days' written notice of the date of the hearing on such forfeiture of the vending device. Such notice shall be considered a notice of proposed assessment under § 26-18-403, and the owner shall be entitled to an administrative hearing pursuant to § 26-18-405.

History. Acts 1997, No. 928, § 12.

26-57-1213. Sale of device upon forfeiture.

(a) In the event the Director of the Department of Finance and Administration or his or her authorized agent finds that the vending device, including the cash contents, if any, should be forfeited to the State of Arkansas, the director or his or her authorized agent shall make a written determination of forfeiture of the vending device to the State of Arkansas, and the director shall direct the sale of such vending device.

(b) The vending device shall be sold by the director, his or her authorized agent, the sheriff in the county where it was seized, or the sheriff of Pulaski County after thirty-days' written notice of sale, which notice of sale shall be given:

(1) In writing to the owner of such vending device at the owner's last known address;

(2) In writing to the operator of such vending device at the operator's last known address; and

(3) By posting five (5) notices of sale in conspicuous places in the county where the sale of such vending device is to be held. One (1) of such notices of sale shall be posted on a bulletin board at the county courthouse of said county.

(c) At the discretion of the director, notice of sale of such vending device may be given, alternatively to posting, by publishing the notice

of sale in a newspaper of general circulation in such county at least thirty (30) days prior to such sale.

History. Acts 1997, No. 928, § 13.

26-57-1214. Disposition of forfeiture sale proceeds.

The sale of the vending device shall be for cash, and the proceeds of such sale shall be applied as follows:

(1) To the payment of the costs incident to the seizure and sale of such vending device;

(2) To the payment of any taxes or decal fee costs, including penalties, that may have accrued against the vending device; and

(3) The balance, if any, shall be remitted to the owner of the vending device.

History. Acts 1997, No. 928, § 14.

26-57-1215. Forfeiture includes cash contents.

The cash contained in any seized vending device, which cash is forfeited under the provisions of this subchapter, shall be forfeited to the State of Arkansas as an additional penalty and shall be in addition to all other penalties provided for under this subchapter.

History. Acts 1997, No. 928, § 15.

26-57-1216. Forfeiture determination — Appeal.

(a) The written determination of the Director of the Department of Finance and Administration or his or her authorized agent declaring a forfeiture of the vending device, including the cash contents thereof, if any, and directing the sale of such vending device shall be a final determination of the director and shall be treated for purposes of the owner's or operator's appeal of the director's determination as a final assessment, subject to the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(b) Judicial review of the final determination by the director shall be available pursuant to the provisions of § 26-18-406.

History. Acts 1997, No. 928, § 16.

26-57-1217. Purpose.

The purpose for the enactment of this subchapter is to provide a simplified method for the operators of such vending devices to be able to pay their proportionate amount of state and local taxes, without being required to maintain complex financial records that would otherwise be required of such operators who are in the unique position among retailers in this state of not being able to pass the cost of sales taxes directly on to their customers, and to assure that the State of Arkansas

and its cities and counties collect their fair share of taxes from what is almost entirely a cash business.

History. Acts 1997, No. 928, § 17.

SUBCHAPTER 13 — ENFORCEMENT ENHANCEMENTS

SECTION.

26-57-1301. Findings and purpose.

26-57-1302. Definitions.

26-57-1303. Certifications — Directory — Tax stamps.

26-57-1304. Requirement for agent for service of process.

SECTION.

26-57-1305. Reporting of information — Escrow installments.

26-57-1306. Penalties and other remedies.

26-57-1307. Miscellaneous provisions.

Effective Dates. Acts 2003, No. 1073, § 8: Apr. 3, 2003. Emergency clause provided: "It is found and determined by the General Assembly that that violations of Arkansas Code §§ 26-57-260 and 26-57-261 threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the state, and the public health and that procedural enhancements will prevent violations and are immediately needed to aid the enforcement of Arkansas Code §§ 26-57-260 and 26-57-261 and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the state, and the public health. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; (3) If the bill is vetoed by the Governor and

the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 384, § 5: Feb. 24, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that smoking poses a serious health risk to Arkansans; that the Master Settlement Agreement is a critical component in reducing the rate of smoking in Arkansas; and that the provisions of this act are immediately necessary for the continued effective administration and enforcement of provisions of the Master Settlement Agreement in Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-57-1301. Findings and purpose.

The General Assembly finds that:

(1) Violations of §§ 26-57-260 and 26-57-261 threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the state, and the public health; and

(2) Enacting procedural enhancements will help prevent violations and aid the enforcement of §§ 26-57-260 and 26-57-261 and thereby

safeguard the Master Settlement Agreement, the fiscal soundness of the state, and the public health.

History. Acts 2003, No. 1073, § 1.

Cross References. Tobacco Settlement Proceeds Act, § 19-12-101 et seq.

26-57-1302. Definitions.

(a) “Brand family” means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, “menthol”, “lights”, “kings”, and “100s”, and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to or identifiable with a previously known brand of cigarettes.

(b) “Cigarette” has the same meaning as in § 26-57-260(4).

(c) “Director” means the Director of the Arkansas Tobacco Control Board.

(d) “Licensee” means any person or entity who has been granted and holds a permit or license under § 26-57-215, including a wholesale cigarette license or permit, a wholesale tobacco license or permit, a salesperson’s license or permit, a retail cigarette license or permit, a retail tobacco license or permit, or a dealer’s license or permit.

(e) “Master Settlement Agreement” has the same meaning as in § 26-57-260(5).

(f) “Nonparticipating manufacturer” means any tobacco product manufacturer that is not a participating manufacturer.

(g) “Participating manufacturer” has the meaning given that term in Section II(jj) of the Master Settlement Agreement and all amendments to the agreement.

(h) “Qualified escrow fund” has the same meaning as that term is defined in § 26-57-260(6).

(i) “Tobacco product manufacturer” has the same meaning as that term is defined in § 26-57-260(9).

(j) “Units sold” has the same meaning as that term is defined in § 26-57-260(10)(A).

(k) “Wholesaler” means:

(1) Any person or entity who has been granted and holds a wholesale cigarette license or permit or a wholesale tobacco license or permit pursuant to § 26-57-215; and

(2) Any person or entity who as a retailer purchases tobacco products directly from a manufacturer or an unlicensed wholesaler or distributor and is therefore liable for reporting and paying taxes under § 26-57-211(a)(1)(B).

History. Acts 2003, No. 1073, § 2.

211(a)(1)(B) appears to be to the version

A.C.R.C. Notes. The reference in subdivision (k)(2) of this section to § 26-57-

as amended by Acts 1997, No. 1337.

26-57-1303. Certifications — Directory — Tax stamps.

(a) CERTIFICATION.

(1) No later than April 30 each year, every tobacco product manufacturer whose cigarettes are sold in Arkansas, whether directly or through a wholesaler, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the Attorney General a certification to the Attorney General certifying under penalty of perjury that as of the date of the certification the tobacco product manufacturer either:

(A) Is a participating manufacturer; or

(B) Is in full compliance with §§ 26-57-260 and 26-57-261, including all quarterly installment payments that may be required under § 26-57-1305(e).

(2) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty (30) calendar days before any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.

(3) A nonparticipating manufacturer shall include in its certification:

(A) An electronic mail address and facsimile number to which notices from the Attorney General may be sent and a list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year;

(B) A list of all of its brand families that have been sold in the state at any time during the current calendar year:

(i) Indicating by an asterisk any brand family sold in the state during the preceding calendar year but that is no longer being sold in the state as of the date of the certification; and

(ii) Identifying by name and address any other manufacturer of the brand families in the preceding or current calendar year.

(4) The nonparticipating manufacturer shall update the list thirty (30) calendar days before any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.

(5) In the case of a nonparticipating manufacturer, the certification shall further certify:

(A) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice thereof as required by § 26-57-1304;

(B) That the nonparticipating manufacturer:

(i) Has established and continues to maintain a qualified escrow fund; and

(ii) Has executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund;

(C) That the nonparticipating manufacturer is in full compliance with §§ 26-57-260 and 26-57-261 and this subchapter and with any regulations promulgated pursuant thereto;

(D) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required under §§ 26-57-260 and 26-57-261 and with all regulations promulgated thereto;

(E) The account number of the qualified escrow fund and any subaccount number for the state;

(F) The amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and such evidence or verification as may be deemed necessary by the Attorney General to confirm the requirements of the foregoing; and

(G) The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments under §§ 26-57-260 and 26-57-261 and all regulations promulgated thereto.

(6) A tobacco product manufacturer may not include a brand family in its certification unless:

(A) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year in the volume and shares determined under the Master Settlement Agreement; and

(B) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of §§ 26-57-260 and 26-57-261.

(7) Nothing in subdivision (a)(6) of this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of §§ 26-57-260 and 26-57-261.

(8) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other information relied upon for the certification for a period of five (5) years unless otherwise required by law to maintain them for a greater period of time.

(b) DIRECTORY OF CIGARETTES APPROVED FOR STAMPING AND SALE.

(1)(A) Not later than the last business day of May of each year, the Attorney General shall develop and make available for public inspection and shall publish on the Attorney General's website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (a) of this section and all brand families that are listed in the certifications except as provided in this section.

(B) The Attorney General shall not include or retain in the directory the name or brand families of any nonparticipating manu-

facturer that has failed to provide the required certification or whose certification the Attorney General determines is not in compliance with subsection (a) of this section unless the Attorney General has determined that the violation has been cured to the satisfaction of the Attorney General.

(C) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the Attorney General concludes in the case of a nonparticipating manufacturer that:

(i) Any escrow payment required under §§ 26-57-260 and 26-57-261 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General; or

(ii) Any outstanding final judgment, including interest on the judgment, for a violation of §§ 26-57-260 and 26-57-261 has not been fully satisfied for the brand family or the manufacturer.

(D) The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this subchapter.

(E) Every wholesaler shall provide and update as necessary an electronic mail address to the Attorney General for the purpose of receiving any notifications as may be required by this subchapter.

(F)(i) Notwithstanding the provisions of this section, in the case of any nonparticipating manufacturer who has established a qualified escrow account pursuant to §§ 26-57-260 and 26-57-261 that has been approved by the Attorney General, the Attorney General may not remove the nonparticipating manufacturer or its brand families from the directory until at least fifteen (15) days after the nonparticipating manufacturer has been given notice of such an intended action.

(ii) Notice shall be sufficient and be deemed immediately received by a nonparticipating manufacturer if the notice is sent either electronically or by facsimile to an electronic mail address or facsimile number, as the case may be, provided by the nonparticipating manufacturer in its most recent certification filed pursuant to subsection (a) of this section.

(c) PROHIBITION AGAINST STAMPING, SALE, OR IMPORT OF CIGARETTES NOT IN DIRECTORY.

(1) It is unlawful for any person or entity to:

(A) Affix a tax stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family that the person or entity knows is not included in the directory maintained by the Attorney General pursuant to subsection (b) of this section; or

(B) Sell, offer, or possess for sale in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family that the person or entity knows is not included in the directory maintained by the Attorney General pursuant to subsection (b) of this section.

(2) Persons and entities are deemed to have received notice that cigarettes of a tobacco product manufacturer or a brand family are not included in the directory maintained by the Attorney General pursuant to subsection (b) of this section at the time the Attorney General's website fails to list any such cigarettes in the directory or at the time the Attorney General removes the cigarettes from the directory.

(3) A person or entity purchasing cigarettes for resale shall not be in violation of this subchapter if:

(A) At the time of purchase the manufacturer and brand families of the cigarettes are included in the directory maintained by the Attorney General pursuant to subsection (b) of this section and the cigarettes are lawfully stamped and sold within twenty-one (21) days of the date the manufacturer and brand families were removed from the directory; or

(B) In the case of a retailer, the cigarettes are sold or delivered to retail customers within twenty-one (21) days after receipt of delivery of such cigarettes from a wholesaler so long as the cigarettes in question were lawfully purchased from the same wholesaler.

(4) No brand families may be purchased by or delivered to a wholesaler once the manufacturer and brand families are removed from the directory.

(5) Any manufacturer, wholesaler, or retailer selling cigarettes for resale of a manufacturer or brand family that has been removed from the directory maintained by the Attorney General pursuant to subsection (b) of this section shall notify the purchaser of such cigarettes of that fact at the time of delivery of the cigarettes.

(6)(A) Unless otherwise provided by contract or purchase agreement, a purchaser shall be entitled to a refund of the purchase price from the manufacturer, wholesaler, or retailer from whom the cigarettes were purchased of any cigarettes that are the product of a manufacturer or a brand family that has been removed from the directory maintained by the Attorney General pursuant to subsection (b) of this section.

(B) The Department of Finance and Administration may by regulation provide for a refund of the price of tax stamps that have been lawfully affixed to cigarettes that may not be sold under this subsection.

History. Acts 2003, No. 1073, § 3; 2005, No. 384, § 2.

A.C.R.C. Notes. Acts 2005, No. 384, § 3, provided: "Severability. (a) If this act or any portion of the amendment to Arkansas Code § 26-57-261(2)(B)(ii) made by this act is held by a court of competent jurisdiction to be unconstitutional, then Arkansas Code § 26-57-261(2)(B)(ii) shall be deemed to be repealed in its entirety.

"(b) If Arkansas Code § 26-57-261(2)(B) shall thereafter be held by a

court of competent jurisdiction to be unconstitutional, then this act shall be deemed repealed and Arkansas Code § 26-57-261(2)(B)(ii) be restored as if the amendment made by this act had not been made.

"(c) Neither any holding of unconstitutionality nor the repeal of Arkansas Code § 26-57-261(2)(B)(ii) shall affect, impair, or invalidate any other portion of Arkansas Code § 26-57-261 or the application of Arkansas Code § 26-57-261 to any other

person or circumstance, and the remaining portions of Arkansas Code § 26-57-261 shall continue in full force and effect.”

Amendments. The 2005 amendment substituted “twenty-one (21)” for “four-

teen (14)” in (c)(3)(A) and (c)(3)(B); inserted present (c)(4); and redesignated former (c)(4) and (c)(5) as present (c)(5) and (c)(6).

CASE NOTES

ANALYSIS

Constitutionality.

Federal Preemption.

Constitutionality.

This section and § 26-57-261 did not violate a tobacco importer’s First Amendment rights where its only complaint, a loss of competitive advantage, did not unconstitutionally burden speech, whether considered personal or commercial. *Int’l Tobacco Ptnrs., LTD v. Beebe*, 420 F. Supp. 2d 989 (W.D. Ark. 2006).

Federal Preemption.

Tobacco importer’s claim that the allocable share amendment set forth in § 26-57-261 and this section violated 15 U.S.C.S. § 1 was dismissed where the amendment did not mandate price-setting or output price fixing by private parties and, as a result, the state statutes were not preempted by the Sherman Act. *Int’l Tobacco Ptnrs., LTD v. Beebe*, 420 F. Supp. 2d 989 (W.D. Ark. 2006).

26-57-1304. Requirement for agent for service of process.

(a)(1) As a condition precedent to having its brand families included or retained in the directory maintained by the Attorney General pursuant to § 26-57-1303(b), any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process and any action or proceeding against it concerning or arising out of the enforcement of this subchapter and §§ 26-57-260 and 26-57-261 may be served in any manner authorized by law.

(2) The service shall constitute legal and valid service of process on the nonparticipating manufacturer.

(3) The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to and to the satisfaction of the Attorney General.

(b)(1) The nonparticipating manufacturer shall provide notice to the Attorney General thirty (30) calendar days before the termination of the authority of an agent and shall provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five (5) calendar days before the termination of an existing agent appointment.

(2) If an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the Attorney General of the termination within five (5) calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

(c)(1) Any nonparticipating manufacturer whose cigarettes are sold in this state and who has not appointed and engaged an agent as

required by this subchapter shall be deemed to have appointed the Secretary of State as the agent and may be proceeded against in courts of this state by service of process upon the Secretary of State.

(2) However, the appointment of the Secretary of State as the agent shall not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included or retained in the directory maintained by the Attorney General pursuant to § 26-57-1303(b).

History. Acts 2003, No. 1073, § 4.

26-57-1305. Reporting of information — Escrow installments.

(a) REPORTING BY WHOLESALERS.

(1) Not later than twenty (20) calendar days after the end of each calendar quarter, each wholesaler shall submit such information as the Attorney General requires to facilitate compliance with this subchapter, including, but not limited to, a list by brand family of the total number of cigarettes or in the case of “roll-your-own”, the equivalent stick count for which the wholesaler affixed tax stamps during the previous calendar quarter or otherwise paid the tax due for the cigarettes.

(2) The wholesaler shall maintain and make available to the Attorney General all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Attorney General for a period of five (5) years.

(b) DISCLOSURE OF INFORMATION.

(1) The Arkansas Tobacco Control Board and the Department of Finance and Administration may disclose to the Attorney General any information in their possession as requested by the Attorney General for purposes of determining compliance with and enforcing the provisions of this subchapter.

(2) The board, the department, and the Attorney General may share with each other any information received under this subchapter and may share the information with other federal, state, or local agencies only for purposes of enforcement of this subchapter, §§ 26-57-260 and 26-57-261, or corresponding laws of other states.

(c) **VERIFICATION OF QUALIFIED ESCROW FUND.** The Attorney General may require at any time from the nonparticipating manufacturer proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with §§ 26-57-260 and 26-57-261 of:

- (1) The amount of money in the fund, exclusive of interest;
- (2) The amount and date of each deposit into the fund; and
- (3) The amount and date of each withdrawal from the fund.

(d) **REQUESTS FOR ADDITIONAL INFORMATION.** In addition to the information required to be submitted under this subchapter, the Attorney General may require a licensee or tobacco product manufacturer to submit any additional information, including, but not limited to,

samples of the packaging or labeling of each brand family as is necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this subchapter.

(e) **QUARTERLY ESCROW INSTALLMENTS FOR TOBACCO PRODUCT MANUFACTURERS.**

(1)(A) To promote compliance with this subchapter, the Attorney General may require any manufacturer to make escrow deposits required by §§ 26-57-260 and 26-57-261 in quarterly installments.

(B) Quarterly installments of escrow deposits required under subdivision (e)(1)(A) of this section shall be deposited into a qualified escrow account established to receive escrow deposits required by §§ 26-57-260 and 26-57-261 not later than twenty (20) calendar days after the end of the quarter in which the sales were made.

(2) The Attorney General may require production of information sufficient to enable the Attorney General to determine the adequacy of the amount of each installment deposit.

(3) The failure of any tobacco product manufacturer to make a quarterly installment of an escrow deposit required by the Attorney General under subdivision (e)(1) of this section shall subject the tobacco product manufacturer to any penalty and other remedy provided under §§ 26-57-261 and 26-57-1303 for failure to place funds in escrow.

History. Acts 2003, No. 1073, § 5; 2007, No. 285, § 1.

Amendments. The 2007 amendment, in (e), deleted “New” preceding “Tobacco” in the introductory paragraph, added the (1)(A) designation and added (1)(B), in (1)(A) substituted “any manufacturer” for

“any manufacturer added to the directory after the first publication of the directory on the Attorney General’s website” and deleted “through the first two (2) years in which the sales covered by the deposits are made” at the end, and added (3).

26-57-1306. Penalties and other remedies.

(a) **LICENSE REVOCATION AND CIVIL PENALTY.**

(1) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a licensee has violated § 26-57-1303(c) or any regulation adopted under this subchapter, the Director of the Arkansas Tobacco Control Board may revoke or suspend the licensee’s licenses or permits pursuant to law and the Arkansas Tobacco Control Board’s rules and regulations governing the procedure for revocation or suspension of the licenses or permits.

(2) Each tax stamp affixed to and each sale or offer to sell cigarettes in violation of § 26-57-1303(c) shall constitute a separate violation.

(3) For each violation the board may also impose a civil penalty in an amount not to exceed the greater of five hundred percent (500%) of the retail value of the cigarettes or five thousand dollars (\$5,000) upon a determination of a violation of § 26-57-1303(b) or of any regulations adopted under this subchapter.

(b) **CONTRABAND AND SEIZURE.** Any cigarettes that have been sold, offered for sale, or possessed for sale in this state or imported for personal consumption in this state in violation of § 26-57-1303(c) shall

be deemed contraband, and the cigarettes shall be subject to seizure and forfeiture as provided in § 5-64-505, and all of the cigarettes so seized and forfeited shall be destroyed and not resold.

(c) INJUNCTION.

(1) The Attorney General may seek an injunction to restrain a threatened or actual violation of § 26-57-1303(c), § 26-57-1305(a), or § 26-57-1305(d) by a licensee and to compel the licensee to comply with those provisions.

(2) In any action brought under this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees.

(d) UNLAWFUL SALE AND DISTRIBUTION.

(1) It is unlawful for a person to sell or distribute cigarettes or to acquire, hold, own, possess, transport, import, or cause to be imported, cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of § 26-57-1303(c).

(2) A violation of this subsection is a Class A misdemeanor.

(e) DECEPTIVE AND UNCONSCIONABLE TRADE PRACTICE. A violation of § 26-57-1303(c) is a deceptive or unconscionable trade practice under § 4-88-101 et seq.

History. Acts 2003, No. 1073, § 6.

26-57-1307. Miscellaneous provisions.

(a) NOTICE AND REVIEW OF DETERMINATION.

(1) A determination by the Attorney General to not include or to remove from the directory a brand family or tobacco product manufacturer shall be subject to review by the filing of a civil action for prospective declaratory or injunctive relief.

(2) The Pulaski County Circuit Court shall have exclusive jurisdiction over the civil action.

(3) In authorizing the civil action, the state does not waive its sovereign immunity from claims for monetary relief, costs, or attorney's fees, and no such relief shall be recoverable in any such civil action.

(b) APPLICANTS FOR LICENSES. No person or entity shall be issued a license or permit or granted a renewal of a license or permit by the Director of the Arkansas Tobacco Control Board unless the person or entity has certified in writing under penalty of perjury that the person or entity will comply fully with this subchapter.

(c) DATES. For the year 2003:

(1) The first report of wholesalers required by § 26-57-1305(a) shall be due thirty (30) calendar days after April 3, 2003;

(2) The certifications by a tobacco product manufacturer described in § 26-57-1303(a) shall be due forty-five (45) calendar days after April 3, 2003; and

(3) The directory described in § 26-57-1303(b) shall be published or made available within ninety (90) calendar days after April 3, 2003.

(d) **PROMULGATION OF REGULATIONS.** The Attorney General, the Arkansas Tobacco Control Board, and the Department of Finance and Administration may promulgate regulations necessary to effect the purposes of this subchapter.

(e) **RECOVERY OF COSTS AND FEES BY ATTORNEY GENERAL.** In an action brought by the Attorney General to enforce this subchapter, the Attorney General shall be entitled to recover the costs of the investigation, expert witness fees, costs of the action, and reasonable attorney's fees.

(f) **DISGORGEMENT OF PROFITS FOR VIOLATIONS OF SUBCHAPTER.**

(1) If a court determines that a person or entity has violated this subchapter, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the Treasurer of State for deposit into the State Central Services Fund.

(2) Unless otherwise expressly provided, the remedies or penalties provided by this subchapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

(g) **CONSTRUCTION AND SEVERABILITY.**

(1) If a court of competent jurisdiction finds that the provisions of this subchapter and of §§ 26-57-260 and 26-57-261 conflict and cannot be harmonized, the provisions of §§ 26-57-260 and 26-57-261 shall control.

(2) If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this subchapter causes §§ 26-57-260 and 26-57-261 to no longer constitute a qualifying or model statute as those terms are defined in the Master Settlement Agreement, that portion of this subchapter shall not be valid.

(3) If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this subchapter is for any reason held to be invalid, unlawful, or unconstitutional, the decision shall not affect the validity of the remaining portions of this subchapter or any part of this subchapter.

History. Acts 2003, No. 1073, § 7.

A.C.R.C. Notes. As enacted by Acts 2003, No. 1073, § 7, the introductory paragraph of § 26-57-1307(c) contained

the following language: "if the effective date of this act is later than March 16, 2003."

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26-53-145.Gross receipts tax, §§26-52-103,
26-52-317.**Allocable share.**

Cigarettes and tobacco products.

Master settlement agreement,
§26-57-260.**Amusement devices, §26-57-402.****Annual.**

Tobacco products tax, §26-57-203.

Any money or property.Coin-operated amusements tax,
§26-57-402.**Automobile.**

Gross receipts tax, §26-52-415.

Bad debt.

Compensating tax, §26-53-111.

Bill of lading.

Motor fuel tax, §26-55-202.

Special motor fuels taxes, §26-56-102.

Biodiesel fuel.

Gross receipts tax, §26-52-401.

Bottle.

Soft drink tax, §26-57-902.

Bottled soft drink.

Soft drink tax, §26-57-902.

Brand family.Tobacco settlement agreement
enforcement, §26-57-1302.**Bulk.**

Special motor fuels taxes, §26-56-102.

Bulk storage facility.

Special motor fuels taxes, §26-56-102.

Bundled transaction.

Compensating tax, §26-53-102.

Gross receipts tax, §26-52-103.

Call-by-call basis.

Gross receipts tax, §26-52-315.

Child care facility.

Compensating tax, §26-53-132.

Gross receipts tax, §26-52-401.

DEFINED TERMS —Cont'd**Cigar.**

Tobacco products tax, §26-57-203.

Cigarette, §26-57-261.

Export cigarettes, §26-57-262.

Master settlement agreement,
§26-57-260.

Tobacco products tax, §26-57-203.

Tobacco settlement agreement
enforcement, §26-57-1302.

Coin-operated.

Tax on coin-operated amusements,
§26-57-402.

Coin-operated bulk vending devices.

Decals, §26-57-1203.

Coin-operated manually-powered vending devices.

Decals, §26-57-1203.

Coin-operated tabletop snack vending devices.

Decals, §26-57-1203.

Coin-operated vending devices.

Decals, §26-57-1203.

Commercial jet aircraft.

Gross receipts tax, §26-52-301.

Communications channel.

Gross receipts tax, §26-52-315.

Compartment.

Motor fuel tax.

Vehicle tank inspections, §26-55-901.

Computer.

Compensating tax, §26-53-109.

Gross receipts tax, §26-52-304.

Computer software.

Compensating tax, §26-53-109.

Gross receipts tax, §26-52-304.

Construction contract.

Compensating tax.

Exemption for property used in
performance of a construction
contract, §26-53-138.

Consumer.

Gross receipts tax, §26-52-103.

Tobacco products tax, §26-57-203.

Contract.

Gross receipts tax, §26-52-103.

Contractor.

Compensating tax, §26-53-201.

Gross receipts tax, §26-52-103.

Corporate headquarters.

Sales and use taxes.

Economic investment tax credit,
§26-52-702.

Corporation.

Corporate franchise taxes, §26-54-102.

Customer.

Gross receipts tax, §26-52-315.

DEFINED TERMS —Cont'd**Customer channel termination point.**

Gross receipts tax, §26-52-315.

Dealer.

Motor fuel tax, §26-55-202.

Special motor fuels taxes, §26-56-102.

Decal fee year.

Vending devices decals, §26-57-1203.

Decal registration year.

Vending devices decals, §26-57-1203.

Defense industry project.

Sales and use taxes.

Economic investment tax credit,
§26-52-702.

Delivered electronically.

Compensating tax, §26-53-109.

Gross receipts tax, §26-52-304.

Delivery charge.

Gross receipts tax, §26-52-103.

Dietary supplement.

Compensating tax, §§26-53-102,
26-53-145.

Gross receipts tax, §§26-52-103,
26-52-317.

Directly.

Gross receipts tax, §26-52-402.

Direct mail.

Gross receipts tax, §26-52-103.

Distillate special fuel.

Special motor fuels taxes, §26-56-102.

Distribution center.

Sales and use taxes.

Economic investment tax credit,
§26-52-702.

Distributor.

Motor fuel tax, §26-55-202.

Distributor, manufacturer or wholesale dealer.

Soft drink tax, §26-57-902.

Doing business.

Gross receipts tax, §26-52-103.

Duly licensed distributor.

Motor fuel tax, §26-55-202.

Durable medical equipment.

Gross receipts tax, §26-52-433.

Electronic.

Compensating tax, §26-53-109.

Gross receipts tax, §26-52-304.

Eligible business.

Sales and use taxes.

Economic investment tax credit,
§26-52-702.

End user.

Gross receipts tax, §26-52-315.

Engaging in business.

Gross receipts tax, §26-52-103.

DEFINED TERMS —Cont'd**Equipment used in the harvesting of timber.**

Gross receipts tax, §26-52-431.

Established business.

Gross receipts tax, §26-52-103.

Exemption certificate.

Compensating tax.

Qualified museums, §26-53-146.

Gross receipts tax.

Qualified museums, §26-52-440.

Exporting.

Motor fuel tax, §26-55-202.

Special motor fuels taxes, §26-56-102.

Farm equipment and machinery.

Gross receipts tax, §26-52-403.

Farming.

Gross receipts tax, §26-52-403.

Feedstuffs.

Compensating tax, §26-53-120.

Gross receipts tax, §26-52-404.

Fire trucks.Tax refund for motor fuels and
distillate special fuels,
§§26-55-1301, 26-56-701.**First receiver.**

Special motor fuels taxes, §26-56-102.

First sale.

Tobacco products tax, §26-57-203.

Food and food ingredients.Compensating tax, §§26-53-102,
26-53-145.Gross receipts tax, §§26-52-103,
26-52-317.**Fuels.**

Motor fuel tax.

Shipments of motor fuels,
§26-55-601.**Gallon.**

Special motor fuels taxes, §26-56-102.

Gas produced from biomass.

Gross receipts tax, §26-52-429.

General tobacco products vendor.

Tobacco products tax, §26-57-203.

Gross proceeds.

Gross receipts tax, §26-52-103.

Gross receipts.

Gross receipts tax, §26-52-103.

Gross sales.

Tobacco products tax, §26-57-203.

Heavy equipment.

Gross receipts tax, §26-52-318.

Home service provider.

Gross receipts tax, §26-52-315.

Importing.

Motor fuel tax, §26-55-202.

Special motor fuels taxes, §26-56-102.

DEFINED TERMS —Cont'd**Interstate user.**

Special motor fuels taxes, §26-56-102.

In this state.

Compensating tax, §26-53-102.

Invested.

Gross receipts tax.

Steel mill tax incentives, §26-52-911.

Investment.

Gross receipts tax.

Steel mill tax incentives, §26-52-901.

Landscaping.

Gross receipts tax, §26-52-301.

Lawn care.

Gross receipts tax, §26-52-301.

Lease.

Gross receipts tax, §26-52-103.

Licensed.

Tobacco products tax, §26-57-203.

Licensee.Tobacco settlement agreement
enforcement, §26-57-1302.**Liquefied gas special fuels.**

Special motor fuels taxes, §26-56-102.

Livestock.

Gross receipts tax, §26-52-439.

Livestock reproduction equipment.

Gross receipts tax, §26-52-439.

Livestock reproduction substance.

Gross receipts tax, §26-52-439.

Load and leave.

Compensating tax, §26-53-109.

Gross receipts tax, §26-52-304.

Machinery and equipment.

Gross receipts tax.

Timber harvesting equipment,
§26-52-431.**Machinery purchased to replace
existing machinery.**

Compensating tax, §26-53-114.

Gross receipts tax, §26-52-402.

Manufactured home.

Gross receipts tax, §26-52-801.

Manufacturer.

Tobacco products tax, §26-57-203.

Manufacturing.

Gross receipts tax, §26-52-402.

Manufacturing of tires.

Gross receipts tax, §26-52-441.

**Master settlement agreement,
§26-57-260.**Tobacco settlement agreement
enforcement, §26-57-1302.**Milk.**

Soft drink tax, §26-57-902.

Mobile home.

Gross receipts tax, §26-52-801.

DEFINED TERMS —Cont'd**Mobile telecommunications service.**

Gross receipts tax, §26-52-315.

Mobility-enhancing equipment.

Gross receipts tax, §26-52-433.

Modernization.

Sales and use taxes.

Economic investment tax credit,
§26-52-702.

Modular home.

Gross receipts tax, §26-52-801.

Motor fuel.

Motor fuel tax, §26-55-202.

Motor vehicle.

Gross receipts tax, §26-52-441.

Motor fuel tax, §26-55-202.

Special motor fuels taxes, §26-56-102.

Natural fruit juice.

Soft drink tax, §26-57-902.

Natural vegetable juice.

Soft drink tax, §26-57-902.

Non-alcoholic beverage.

Soft drink tax, §26-57-902.

Nonparticipating manufacturer.

Tobacco settlement agreement
enforcement, §26-57-1302.

Nonprofit organization.

Compensating tax.

Qualified museums, §26-53-146.

Gross receipts tax.

Qualified museums, §26-52-440.

Novelty.

Tax on coin-operated amusements,
§26-57-402.

Office sector.

Sales and use taxes.

Economic investment tax credit,
§26-52-702.

Off-road consumer.

Special motor fuels taxes, §26-56-102.

Off-road equipment.

Gross receipts tax.

Timber harvesting equipment,
§26-52-431.

Operator.

Vending devices decals, §26-57-1203.

Other base.

Soft drink tax, §26-57-902.

Owner.

Vending devices decals, §26-57-1203.

Package.

Cigarettes, §26-57-261.

Export cigarettes, §26-57-262.

Participating manufacturer.

Tobacco settlement agreement
enforcement, §26-57-1302.

Past-due franchise taxes.

Corporate franchise tax, §26-54-114.

DEFINED TERMS —Cont'd**Past officer or director.**

Corporate franchise tax, §26-54-114.

Person.

Coin-operated amusements tax,
§26-57-402.

Compensating tax, §§26-53-102,
26-53-144.

Gross receipts tax, §§26-52-103,
26-52-436, 26-52-518.

Motor fuel tax, §26-55-202.

Shipments of motor fuels,
§26-55-601.

Vehicle tank inspections, §26-55-901.

Sales and use taxes.

Economic investment tax credit,
§26-52-702.

Special motor fuels taxes, §26-56-102.

Tobacco products tax, §26-57-203.

Vending device sales tax, §26-57-1001.

Vending devices decals, §26-57-1203.

Petroleum products.

Motor fuel tax.

Vehicle tank inspections, §26-55-901.

Pipeline importer.

Motor fuel tax, §26-55-202.

Special motor fuels taxes, §26-56-102.

Place of business.

Soft drink tax, §26-57-902.

Tobacco products tax, §26-57-203.

Place of primary use.

Gross receipts tax, §26-52-315.

Postpaid calling service.

Gross receipts tax, §26-52-315.

Powder.

Soft drink tax, §26-57-902.

Prepaid authorization number.

Gross receipts tax, §26-52-314.

Prepaid calling service.

Gross receipts tax, §§26-52-314,
26-52-315.

Prepaid telephone calling card.

Gross receipts tax, §26-52-314.

Prepaid wireless calling service.

Gross receipts tax, §26-52-314.

Prepared food.

Compensating tax, §§26-53-102,
26-53-145.

Gross receipts tax, §§26-52-103,
26-52-317.

Prewritten computer software.

Compensating tax, §26-53-109.

Gross receipts tax, §26-52-304.

Primary activity.

Gross receipts tax.

Timber harvesting equipment,
§26-52-431.

DEFINED TERMS —Cont'd**Private communication service.**

Gross receipts tax, §26-52-315.

Processing.

Gross receipts tax, §26-52-402.

Production and processing equipment.

Gross receipts tax.

Steel mill tax incentives, §26-52-911.

Project.

Sales and use taxes.

Economic investment tax credit,
§26-52-702.

Promoter.

Gross receipts tax, §26-52-518.

Proof of age.

Cigarettes and tobacco products,
§26-57-257.

Prosthetics.

Gross receipts tax, §26-52-433.

Public highways.

Motor fuel tax, §26-55-202.

Purchase.

Compensating tax, §26-53-102.

Motor fuel tax, §26-55-202.

Special motor fuels taxes, §26-56-102.

Purchaser.

Compensating tax, §26-53-102.

Gross receipts tax, §26-52-103.

Qualified escrow fund.

Cigarettes and tobacco products.
Master settlement agreement,
§26-57-260.

Tobacco settlement agreement
enforcement, §26-57-1302.

Qualified manufacturer of steel.

Gross receipts tax.

Steel mill tax incentives,
§§26-52-901, 26-52-911.

Qualified museum.

Compensating tax, §26-53-146.

Gross receipts tax, §26-52-440.

Qualified museum facility.

Compensating tax, §26-53-146.

Gross receipts tax, §26-52-440.

Qualifying purchase.

Gross receipts taxes, §26-52-523.

Received.

Motor fuel tax, §26-55-202.

Special motor fuels taxes, §26-56-102.

Recharge.

Gross receipts tax.

Prepaid telephone calling cards,
§26-52-314.

Regional headquarters.

Sales and use taxes.

Economic investment tax credit,
§26-52-702.

DEFINED TERMS —Cont'd**Released claims.**

Cigarettes and tobacco products.

Master settlement agreement,
§26-57-260.

Releasing parties.

Cigarettes and tobacco products.

Master settlement agreement,
§26-57-260.

Rental.

Gross receipts tax, §26-52-103.

Residential.

Gross receipts tax, §26-52-301.

Restricted tobacco products vendor.

Tobacco products tax, §26-57-203.

Retail dealer.

Soft drink tax, §26-57-902.

Retailer.

Soft drink tax, §26-57-902.

Tobacco products tax, §26-57-203.

Retail sale.

Gross receipts tax, §26-52-103.

River port.

Motor fuel tax.

Shipments of motor fuels,
§26-55-601.

Routine maintenance.

Sales and use taxes.

Economic investment tax credit,
§26-52-702.

Sale.

Compensating tax, §26-53-102.

Gross receipts tax, §26-52-103.

Motor fuel tax, §26-55-202.

Soft drink tax, §26-57-902.

Special motor fuels taxes, §26-56-102.

Sale at retail.

Gross receipts tax, §26-52-103.

Salesperson.

Tobacco products tax, §26-57-203.

Sales price.

Compensating tax, §26-53-102.

Gross receipts tax, §26-52-103.

Manufactured or modular homes,
§26-52-801.

Seller.

Compensating tax, §26-53-102.

Gross receipts tax, §26-52-103.

Semitrailer.

Compensating tax, §26-53-144.

Gross receipts tax, §26-52-436.

Service address.

Gross receipts tax, §26-52-315.

Simple syrup.

Soft drink tax, §26-57-902.

Single transaction.

Gross receipts taxes, §26-52-523.

DEFINED TERMS —Cont'd**Soft drink.**

Taxation, §26-57-902.

Special events.

Gross receipts tax, §26-52-518.

Special events vendor.

Gross receipts tax, §26-52-518.

Stamps.

Tobacco products tax, §26-57-203.

Standard fuel tank.

Border tax rate areas, §26-55-212.

Storage.

Compensating tax, §26-53-102.

Substantially.

Gross receipts tax, §26-52-402.

Substantially connected.

Corporate franchise tax, §26-54-114.

Supplier.

Special motor fuels taxes, §26-56-102.

Syrup.

Soft drink tax, §26-57-902.

Tangible personal property.

Compensating tax, §26-53-102.

Gross receipts tax, §26-52-103.

Taxable service.

Compensating tax, §26-53-102.

Taxpayer.

Compensating tax, §26-53-102.

Gross receipts tax, §26-52-103.

Tax period.

Gross receipts tax, §26-52-103.

Terminal.

Motor fuel tax, §26-55-202.

Special motor fuels taxes, §26-56-102.

Tobacco.

Compensating tax, §§26-53-102,
26-53-145.

Gross receipts tax, §§26-52-103,
26-52-317.

Tobacco product.

Tobacco products tax, §26-57-203.

Tobacco product manufacturer.

Master settlement agreement,
§26-57-260.

Tobacco settlement agreement
enforcement, §26-57-1302.

Tobacco product vending machine.

Tobacco products tax, §26-57-203.

Toy.

Coin-operated amusements tax,
§26-57-402.

Transient guests.

Gross receipts tax, §26-52-301.

Transportation equipment.

Gross receipts tax, §26-52-521.

Truck tractor.

Compensating tax, §26-53-144.

Gross receipts tax, §26-52-436.

DEFINED TERMS —Cont'd**Units sold.**

Cigarettes and tobacco products.

Master settlement agreement,
§26-57-260.

Tobacco settlement agreement
enforcement, §26-57-1302.

Use.

Compensating tax, §26-53-102.

Special motor fuels taxes, §26-56-102.

Used directly.

Compensating tax, §26-53-114.

User.

Gross receipts tax, §26-52-103.

Special motor fuels taxes, §26-56-102.

Vehicle tank.

Motor fuel tax, §26-55-901.

Vending device.

Decals, §26-57-1203.

Vending device sales tax, §26-57-1001.

Vending device operator.

Vending device sales tax, §26-57-1001.

Vendor.

Compensating tax, §26-53-102.

Warehouse.

Tobacco products tax, §26-57-203.

Wet marine and foreign trade insurance.

Insurance premium taxes, §26-57-605.

Wholesaler.

Tobacco products tax, §26-57-203.

Tobacco settlement agreement
enforcement, §26-57-1302.

Within this state.

Compensating tax, §26-53-102.

DEPOSITS.**Motor fuel tax.**

Distributors.

Government obligations.

Alternative to furnishing bonds,
§26-55-223.

Tobacco products tax.

Stamp deputies, §26-57-236.

DIABETES.**Insulin and test strips.**

Testing of blood sugar levels in
humans.

Gross receipts tax exemption,
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DRUGS.**Gross receipts tax.**

Prescription drugs.

Exemption, §26-52-406.

Rules and regulations, §26-52-406.

DURABLE MEDICAL EQUIPMENT.

Compensating tax, §26-53-141.

DURABLE MEDICAL EQUIPMENT

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Gross receipts tax, §26-52-433.**E****EDUCATION.****Gross receipts tax.**Cafeterias operated by public,
common, high school or college.Gross receipts or proceeds derived
from sale of food.

Exemptions, §26-52-401.

Elementary and secondary schools.

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Exemption, §26-52-412.

ELECTIONS.**Gross receipts tax.**

Border cities and towns.

Equalization of taxes, §§26-52-601 to
26-52-607.**ELECTRICITY.****Compensating tax.**

Electric power companies.

Imposition of tax on tangible
personal property, §26-53-108.Sale of natural gas or electricity to
manufacturers, §26-53-148.**Gross receipts tax.**

Exemptions.

Applicability to all electric utilities,
§26-52-416.Exemption for first 500 kilowatt
hours of electricity billed to
households with income less
than \$12,000 per year,
§26-52-416.

Imposition of tax, §26-52-301.

Sale of natural gas or electricity to
manufacturers, tax on, §26-52-319.Sales of electricity used in
manufacture of aluminum metal
by electrolytic reduction process.

Exemptions, §26-52-401.

Tire manufacturing, used in
production of, §26-52-441.**EVIDENCE.****Motor fuel tax.**

Fuel imported in supply tanks.

Unlicensed users.

Failure to pay tax.

Prima facie evidence of failure
to comply, §26-55-717.**Tobacco products tax.**

Improperly handled products.

Seizure and held as evidence for
prosecution, §26-57-247.**EVIDENCE —Cont'd****Tobacco products tax —Cont'd**Possession of improperly handled
products.Prima facie evidence of intent to
evade tax, §26-57-246.Possession of untaxed and unstamped
products.Prima facie evidence of nonpayment
of tax, §26-57-244.**EXCISE TAXES.****Cigarettes and tobacco products.**Tobacco products tax, §§26-57-201 to
26-57-254.**Tobacco products tax**, §§26-57-201 to
26-57-254.**EXPORTS.****Special motor fuels tax.**

Definition of exports, §26-56-102.

F**FAIRS.****Gross receipts tax.**Gate admission fees at state, district,
county or township fairs.

Exemptions, §26-52-401.

FEEDS.**Compensating tax.**

Feedstuffs used for livestock.

Exemptions, §26-53-120.

Machinery and equipment.

Used for manufacturing.

Exemption, §26-53-114.

Gross receipts tax.Machinery and equipment used for
manufacturing.

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Licenses.

Annual fees, §26-57-409.

Selling, §26-57-419.

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Sale of devices.

Privilege fee imposed on
salesperson, §26-57-418.**Motor fuel tax.**

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Nonbonded motor fuel users.

Claims for refunds or credits,
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Permits and licenses.

Duplicates, §26-57-222.

FERTILIZERS.

Compensating tax exemption,
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FINANCE AND ADMINISTRATION DEPARTMENT.**Compensating tax.**

Revenue division.
Sales and use tax.
Section created within,
§26-53-105.

Records.

Fire departments.
Tax refund for motor fuels and
distillate special fuels,
§§26-55-1306, 26-56-706.

Rules and regulations.

Fire departments.
Tax refund for motor fuels and
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Powers of director, §§26-55-1308,
26-56-708.

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Imposition of tax, §26-53-110.

Gross receipts tax.

Imposition of tax.
Sales of tangible personal property
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FINES.**Buses.**

Compensating tax exemption.
Motor fuels, §26-53-117.

Coin-operated machines.

Amusements.
Selling in violation of provisions,
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Compensating tax.

Motor fuels used in municipal buses.
Abuse of exemption, §26-53-117.

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Motor fuels used in municipal buses.
Abuse of exemption, §26-52-417.

Motor fuel tax.

Border tax rate areas.
Sale and delivery of motor fuel in
violation of provisions,
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Discontinuance or transfer of business.
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Distributors.
Licenses.

Noncompliance with license
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FINES —Cont'd**Motor fuel tax —Cont'd**

Failure to file or falsification of
reports, statements or returns,
§26-55-236.
Fuel imported in supply tanks.
Failure to pay tax or filing
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Records.
Failure of distributors and dealers
to retain, §26-55-237.
Reports by persons not distributors.
Failure to file, §26-55-234.
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§26-55-248.
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Tanks.
Vehicle tank inspection law,
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Privilege taxes.

State privilege taxes.
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Special motor fuels tax, §26-56-103.

Distillate special fuels.
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Reports.

False or fraudulent reports,
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Tobacco products tax.

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warehousemen to maintain,
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unpaid taxes.
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FIRE DEPARTMENTS.**Motor fuel tax.**

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26-55-1308.

Special motor fuels tax.

Refund for fuels purchased for use in
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FIRES AND FIRE PREVENTION.**Insurance.****Taxation.**

Fire protection services.

Additional tax on insurers,
§26-57-614.

Taxation.

Fire protection services.

Additional tax on insurers,
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Government agencies providing food to
poor and needy or public penal
and eleemosynary institutions.

Refund of tax levied and paid upon,
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Levy of tax on food and food
ingredients, §26-53-145.

Gross receipts tax.

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ingredients, §26-52-317.

Livestock or poultry.

Foodstuffs used in commercial
production.

Exemptions, §26-52-402.

Nonprofit food distribution agencies.
Exemptions, §26-52-421.

Sale of foodstuffs to governmental
agencies for free distribution to
public.

Exemptions, §26-52-401.

FOOD STAMPS.**Gross receipts tax.**

Exemptions.

Sale of tangible personal property
lawfully purchased with food
stamps, §26-52-401.

FORGERY.**Tobacco products tax.**

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